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PART 1
TRANSPORTATION ACT—1963

HEARINGS
BEFORE THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
EIGHTY-EIGHTH CONGRESS
FIRST SESSION
ON

H.R. 4700
BILL TO EXEMPT CERTAIN CARRIERS FROM MINIMUM RATE REGULATION IN THE TRANSPORTATION OF BULK COMMODITIES, AGRICULTURAL AND FISHERY PRODUCTS, AND PASSENGERS, AND FOR OTHER PURPOSES

H.R. 4701
A BILL TO PROVIDE FOR STRENGTHENING AND IMPROVING THE NATIONAL TRANSPORTATION SYSTEM AND FOR OTHER PURPOSES

APRIL 30, MAY 1, 2, 3, 7, 8, 9, 1963

Printed for the use of the
Committee on Interstate and Foreign Commerce

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TRANSPORTATION ACT—1963

TUESDAY, APRIL 30, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

This morning the committee opens hearings on two bills, H.R. 4700 and H.R. 4701, which were introduced by me upon being transmitted to the Congress by letter of the President on March 5 of this year.

(H.R. 4700, H.R. 4701, and agency reports follow:)

[H.R. 4700, 88th Cong., 1st sess.]

A BILL To exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1 of the Interstate Commerce Act, as amended (49 U.S.C. 1), is amended by adding thereto a new paragraph (23) to read as follows:

"(23) Notwithstanding any other provisions of this Act, in the case of rates, fares, or charges for the interstate transportation of (1) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count, or to the transportation of liquid commodities in bulk, (2) property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof): *Provided*, That the words 'property consisting of ordinary livestock, fish, including shellfish), of agricultural (including horticultural) commodities (not including manufactured products thereof), as used herein shall include property shown as 'Exempt' in the 'Commodity List' incorporated in ruling numbered 107, March 19, 1948, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as 'Not exempt'; *Provided further, however*, That notwithstanding the preceding proviso the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof), shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (included breaded) fish or shellfish when frozen or fresh (but not including fish and shellfish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned or kippered products) or (3) passengers, by carriers subject to parts I, II, III, or IV of this Act, the Commission shall have no authority or power to determine that such a rate, fare, or charge is lower than a reasonable minimum rate, fare, or charge. The Commission, however, shall retain all currently effective authority and power to determine that such a rate, fare, or charge is in violation of applicable provisions against unjust discrimination, or undue or unreasonable preference or advantage. When used in this paragraph, the terms 'rates, fares, or charges' shall include all classifications, regulations, and practices relating thereto. If any carrier or

carriers exempted by the provisions of this paragraph from minimum rate regulation shall engage in any act, practice, or conduct or be a party to any arrangement, contract, combination, or conspiracy with respect to any rate, charge, or fare for transportation of any commodity referred to in this paragraph, or of passengers, in violation of the provisions of the antitrust laws, as designated in section 1 of the Act of October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes,' such carrier or carriers shall be subject to the proceedings and penalties specified in such laws and all amendments thereto with respect to such violations: *Provided*, That nothing contained in this section shall be construed to prohibit a common carrier from establishing, in accordance with the provisions of section 5a of the Interstate Commerce Act, reasonable through routes with other such carriers, or from considering, initiating, or establishing jointly with other such carriers the rates, fares, classifications, divisions, allowances, or charges applicable solely to such reasonable through routes."

(b) Section 5a of the Interstate Commerce Act is amended by changing the period at the end of paragraph (9) to a comma, and adding the following: "except that such relief shall not extend to any party to an agreement with respect to any rate, charge, or fare for transportation of any commodity referred to in section 1(23) of this Act, or of passengers."

SEC. 2. Section 303(b) of the Interstate Commerce Act is amended to read as follows:

"(b) Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. This subsection shall not apply to transportation subject, at the time this part takes effect, to the provisions of the Intercoastal Shipping Act, 1933, as amended."

SEC. 3. Section 418 of the Interstate Commerce Act is amended by striking out all following the final semicolon therein and inserting in lieu thereof "or common carriers engaged in transportation exempted under the provisions of section 1(23) or 303(b) of this Act."

SEC. 4. (a) The Intercoastal Shipping Act, 1933 (46 U.S.C. 843), is amended by redesignating section 8 as section 9, and inserting immediately after section 7 the following new section:

"SEC. 8. Notwithstanding any other provisions of this Act, in the case of rates, fares, or charges for the transportation of (1) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count, or to the transportation of liquid commodities in bulk, (2) property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof): *Provided*, That the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' as used herein shall include property shown as 'Exempt' in the 'Commodity List' incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as 'Not exempt': *Provided further, however*, That notwithstanding the preceding proviso the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shellfish when frozen or fresh fish (but not including fish and shellfish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products), or (3) passengers, the Commission shall have no authority or power to determine that such a rate, fare, or charge is lower than a reasonable minimum rate, fare, or charge. The Commission, however, shall retain all currently effective authority and power to determine that such a rate, fare, or charge is in violation of applicable provisions against unjust discrimination or undue or unreasonable preference or advantage. When used in this paragraph, the terms 'rates, fares, or charges' shall include all classifications, regulations and practices relating thereto. If any carrier or carriers exempted by the provisions of this section from minimum rate regulation shall engage in any act, practice, or conduct or be a party to any arrangement, contract, combination, or conspiracy with respect to any rate, charge, or fare for transportation of any commodity referred to in this section, or of passengers,

in violation of the provisions of the antitrust laws, as designated in section 1 of the Act of October 15, 1914, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes', such carrier or carriers shall be subject to the proceedings and penalties specified in such laws and all amendments thereto with respect to such violations: *Provided*, That nothing contained in this section shall be construed to prohibit a common carrier from establishing, in accordance with the provisions of section 15 of the Shipping Act of 1916, reasonable through routes with other such carriers, or from considering, initiating, or establishing jointly with other such carriers the rates, fares, classifications, divisions, allowances, or charges applicable solely to such reasonable through routes."

(b) Section 15 of the Shipping Act, 1916, as amended (46 U.S.C. 814), is amended by changing the period to a comma at the end of the next to last paragraph therein, and adding the following: "except that such relief shall not extend to any agreement with respect to any rate, charge, or fare referred to in section 8 of the Intercoastal Shipping Act, 1933, as amended."

SEC. 5. (a) Subsection (d) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482) is amended by inserting the designation "(1)" after "*Provided*," replacing the period at the end of said subsection with a comma, and adding the following:

"(2) That as to rates and charges for transportation of (i) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count, or of liquid commodities in bulk, and (ii) property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof) the Board shall have no authority or power to determine that such a rate or charge is lower than a reasonable minimum rate or charge. The Board, however, shall retain all currently effective authority and power to determine that such a rate or charge is in violation of applicable provisions against unjust discrimination, or undue or unreasonable preference or advantage. When used in this paragraph, the term 'rates or charges' shall include all classifications, regulations, rules, and practices relating thereto. If any carrier or carriers exempted by the provisions of this subsection (d)(2) from minimum rate regulation shall engage in any act, practice, or conduct or be a party to any arrangement, contract, combination, or conspiracy with respect to any rate or charge for transportation of any commodity referred to in such subsection in violation of the provisions of the antitrust laws, as designated in section 1 of the Act of October 15, 1914, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes', such carrier or carriers shall be subject to the proceedings and penalties specified in such laws and all amendments thereto with respect to such violations: *Provided*, That nothing contianed in this section shall be construed to prohibit a common carrier from establishing, in accordance with the provisions of this Act, reasonable through routes with other such carriers, or from considering, initiating or establishing jointly with other such carriers the rates, classifications, divisions, allowances, or charges applicable solely to such reasonable through routes."

(b) Section 1002 of the Federal Aviation Act of 1958 is further amended by adding at the end thereof the following new subsection:

"DEFINITIONS

"(j) For the purposes of subsection (d)(2) of this section, the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' shall include property shown as 'Exempt' in the 'Commodity List' incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as 'Not exempt': *Provided*, That these words shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shellfish when frozen or fresh (but not including fish and shellfish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products)."

(c) Section 414 of the Federal Aviation Act of 1958 is amended by changing the period at the end thereof to a comma, and adding the following: "except that such relief shall not extend to any party to an agreement with respect to any

rate or charge or transportation of any commodity referred to in section 1002 (d)(2) of this Act."

(d) It is the intent of Congress that regulatory control over minimum passenger fares of the air carriers be reduced to the greatest extent consistent with the public interest, so that business incentives and competition may play a more influential role in the pricing of air transportation.

[H.R. 4701, 88th Cong., 1st sess.]

A BILL To provide for strengthening and improving the national transportation system and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Transportation Act of 1963".

EXPERIMENTS BY COMMON CARRIERS IN RATE, CLASSIFICATION, AND DOCUMENTATION SYSTEMS

SEC. 2. (a) In order to test new service combinations or arrangements, simplified documentation, and plans for different or simplified rate bases and freight classifications, the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission are empowered and encouraged to authorize experiments by individual common carriers, between common carriers of the same mode of transportation, between common carriers of different modes of transportation, or among common carriers of all modes of transportation subject to the regulatory authority of agencies of the United States.

(b) Experiments in subsection (a) may, after notice to the public affording interested persons opportunity to submit written views, be authorized by the regulatory agency concerned, or, where common carriers subject to different regulatory agencies are concerned, by those agencies jointly. Such regulatory agency or agencies shall control and carefully supervise such experiments and shall provide, in any authorization granted for such experiments, terms and conditions covering the duration, location, number, scope, and type of such experiment.

(c) Experiments in subsection (a) may be proposed by carriers, shippers, or regulatory agencies. However, participation by shippers or common carriers subject to the Interstate Commerce Act, the Federal Aviation Act of 1958 or the Intercoastal Shipping Act, 1933, shall be voluntary.

(d) Where joint action by two or more agencies is required under subsection (b) or (c) hereof, it shall be taken by the joint boards provided for in section 1003 of the Federal Aviation Act of 1958 (49 U.S.C. 1483), and the actions of such joint boards shall be reviewable as therein provided.

(e) For the purposes of this section, each agency referred to in subsection (a) shall have the powers conferred on it in the statute creating such agency, and nothing in this section shall be deemed to diminish the existing regulatory powers of such agencies or to restrict existing rights of carriers subject to the regulatory authority of such agencies.

RIGHT TO SHIP VEHICLES OR CONTAINERS ON CARRIERS OF OTHER MODES WITHOUT PRICE DISCRIMINATION

SEC. 3. (a) Section 2 of the Interstate Commerce Act (49 U.S.C. 2) is amended by inserting "(a)" after "SEC. 2." and by adding at the end thereof the following new subsection:

"(b) Common carriers subject to the provisions of this part shall not unjustly discriminate as to service or rates in the transportation of loaded or empty vehicles or shipping containers tendered for transportation by any shipper or carrier, whether or not regulated."

(b) Section 216(d) of such Act (49 U.S.C. 316(d)) is amended by changing the period at the end thereof to a colon and adding the following: "*Provided further, however,* That common carriers subject to the provisions of this part shall not unjustly discriminate as to service or rates in the transportation of loaded or empty vehicles or shipping containers tendered for transportation by any shipper or carrier, whether or not regulated."

(c) Section 305(c) of such Act (49 U.S.C. 905(c)), is amended by changing the period after the proviso to a colon and adding the following: "*Provided*

further, however, That common carriers subject to the provisions of this part shall not unjustly discriminate as to service or rates in the transportation of loaded or empty vehicles or shipping containers tendered for transportation by any shipper or carrier, whether or not regulated."

ESTABLISHMENT OF THROUGH SERVICE AND JOINT RATES; JOINT BOARDS

SEC. 4. (a) It is hereby declared to be in the national interest that the establishment of through service and joint rates, fares, and charges between carriers of all modes of transport be encouraged and promoted.

(b) Section 1003 of the Federal Aviation Act of 1958 (49 U.S.C. 1483) is hereby amended to read as follows:

"DESIGNATION OF BOARDS

"SEC. 1003 (a) The Board, the Federal Maritime Commission, and the Interstate Commerce Commission shall direct their respective chairmen to designate from time to time, a like number of members of each to act as a joint board to consider and pass upon matters referred to such board as provided in subsection (e) of this section.

"THROUGH SERVICE AND JOINT RATES, FARES, AND CHARGES

"(b) Air carriers subject to the Federal Aviation Act of 1958, common carriers subject to parts I, II, and III of the Interstate Commerce Act, as amended, and common carriers by water subject to the Intercoastal Shipping Act, 1933, as amended (including persons who hold themselves out to transport goods by water but who do not own or operate vessels), may voluntarily establish and maintain reasonable through service and joint rates, fares, and charges with any other such common carriers in connection with the transportation of persons or property in interstate or foreign commerce; except that air carriers not directly engaged in the operation of aircraft in air transportation (other than companies engaged in the air express business) may not establish joint rates or charges, under the provisions of this subsection, with common carriers subject to the Interstate Commerce Act, as amended, and the Intercoastal Shipping Act, 1933, as amended. Any joint rates, fares, and charges this established may be canceled by any party thereto by giving thirty days' notice to the other party or parties and by tariff cancellation notice to the agency or agencies referred to in subsection (c) of this section, notwithstanding any order that may have been made with respect thereto under subsection (f) or (g) hereof.

"JOINT RATES, FARES, AND CHARGES TO BE JUST AND REASONABLE

"(c) Such joint rates, fares or charges and classification, rules, regulations and practices relating thereto as may be established pursuant to subsection (b) of this section shall be just and reasonable, and if joint rates, fares, or charges shall have been etsablished with respect to such through service, tariffs naming such joint rates, fares, or charges shall be filed by each of the carriers party thereto with the agency having regulatory jurisdiction over the portion of the through services to be performed by such carrier in accordance with the tariff rules and regulations of such agency. Just, reasonable, and equitable divisions thereof between the carriers participating therein, which shall not unduly prefer or prejudice any of such participating carriers, shall be established.

"COMPLIANCE WITH TARIFFS

"(d) No carrier party to a tariff filed in accordance with subsection (c) shall charge or demand or collect or receive a greater or lesser or different compensation for transportation between points served by it and points served by any other carrier or for any service in connection therewith than the rates and charges so filed; and no such carrier shall, in any manner or by any device, directly or indirectly, or through any agent or broker or others, refund or remit any portion of the rates or charges so specified, or extend to any person any privileges or facilities other than those described in such tariffs. The willful failure of any such carrier to observe tariffs filed in accordance with this section shall be punishable by a fine of not less than $1,000 nor more than $20,000 for each offense.

"(e) Matters relating to such through service and joint rates, fares, or charges may be referred by the Board, the Federal Maritime Commission, or the Interstate Commerce Commission, upon complaint or upon its own initiative, to a joint board created as provided in subsection (a). Complaints may be filed with the Federal Maritime Commission, the Interstate Commerce Commission, or the Board by any person affected thereby, charging that any joint rate, fare, or charge or any classification, regulation, or practice relating thereto, is, or will be, in violation of subsection (c). Any carrier participating in a joint rate may file a complaint charging that the divisions of such joint rate are in violation of subsection (c).

"POWERS OF BOARDS

"(f) With respect to matters referred to any joint board as provided in subsection (e), such joint board shall have the same powers which section 216 of the Interstate Commerce Act (49 U.S.C. 316), confers upon the Interstate Commerce Commission in respect to common carriers of property by motor vehicle. In prescribing just and reasonable joint rates, fares, and charges, and classifications, regulations, and practices relating thereto, any such joint board shall give due consideration, among other factors, to the inherent advantages of transportation by the carriers involved; to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service. Joint boards are authorized to use, with its consent, the available services, equipment, personnel, and facilities of any of the participating agencies and may adopt for the conduct of their proceedings the suitable procedural rules of any participating agency.

"REVIEW OF ORDERS OF BOARDS

"(g) An order of any such joint board shall take effect within a reasonable time, not less than thirty days, except as otherwise provided by the joint board, and shall continue in force until its further order, or for a specified period of time, as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by a joint board or be suspended or set aside by a court of competent jurisdiction: *Provided*, That the provisions of this subsection shall not preclude cancellation of any joint rates, fares, or charges established by carriers pursuant to subsection (b). Any such order shall be reviewable as provided in title 5, United States Code, sections 1031–1041, inclusive."

ENFORCEMENT AGREEMENTS WITH STATES ON HIGHWAY TRANSPORTATION

SEC. 5. Section 205(f) of the Interstate Commerce Act (4 U.S.C. 305(f) is amended by inserting after the second sentence thereof the following new sentence: "In addition, the Commission is authorized to make cooperative agreements with the various States to enforce the economic and safety laws and regulations of the various States and the United States concerning highway transportation."

EXTENSION OF CIVIL FORFEITURE PENALTIES OF INTERSTATE COMMERCE ACT TO VIOLATIONS INVOLVING LACK OF OPERATING AUTHORITY; INCREASE IN PENALTIES

SEC. 6. Subsection (h) of section 222 of the Interstate Commerce Act (49 U.S.C. 322 (h) is amended by striking out the words "shall forfeit to the United States the sum of $100 for each such offense, and, in case of a continuing violation, not to exceed $50 for each additional day during which such failure or refusal shall continue" in the first sentence therein and by inserting in lieu thereof the following words: "or who shall fail or refuse to comply with the provisions of section 203(c) or section 206(a)(1) or section 209(a)(1); or who shall fail or refuse to comply with any rule, regulation, requirement or order promulgated by the Commission pursuant to the provisions of section 204(a)(1), 204(a)(2), 204(a)(3), or 204(a)(3a), shall forfeit to the United States the sum of $500 for each offense, and, in case of a continuing violation not to exceed $250 for each additional day during which such failure or refusal shall continue."

CIVIL LIABILITY FOR VIOLATIONS OF FEDERAL AVIATION ACT BY AIR CARRIERS

SEC. 7. Section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471) is amended by adding at the end thereof the following new subsection:

"REPARATION AWARDS; LIMITATION OF ACTIONS

"(c)(1) In case any air carrier or foreign air carrier demands, charges, collects, or receives any individual or joint rate, fare, or charge, or establishes or maintains any classification, rule, regulation, or practice in connection therewith in violation of section 403 or 404 of this Act, such air carrier or foreign air carrier shall be liable to the person or persons (not including an air carrier or foreign air carrier suing in other than the capacity of a shipper) injured thereby for the full amount of damages sustained in consequence thereof together with a reasonable counsel's or attorney's fee to be fixed by the court in every case of recovery, which fee shall be taxed and collected as part of the costs in the case.

"(2) Any person, organization, or body politic claiming to be damaged by any such carrier may either make complaint to the Board or may bring suit in his or their own behalf for the recovery of the damages for which such carrier may be liable under the provisions of paragraph (1), in any district court of the United States of competent jurisdiction; but such person, organization, or body politic shall not have the right to pursue both of said remedies.

"(3) When a complaint as authorized in paragraph (2) of this section is filed with the Board, a statement of such complaint shall be forwarded by the Board to the carrier or carriers named in such complaint, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Board. If such carrier or carriers within the time specified shall make reparation for the injury alleged to have been done, such carrier or carriers shall be relieved of liability to the complainant only for the particular violation of law set forth in the complaint. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating the said complaint, it shall be the duty of the Board to investigate the matter complained of in such manner and by such means as it shall deem proper.

"(4) If, after hearing on a complaint, the Board shall determine that any party complainant is entitled to an award of damages under the provision of this Act for a violation thereof by any carrier, the Board shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

"(5) If such carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file with the district court of the United States for the district in which he or it resides, or in which is located the principal operating office of such carrier, or in which such carrier operates, or in any State court of general jurisdiction having jurisdiction of the parties, a complaint setting forth briefly the causes for which he claims damages, and the order of the Board in the premises. Such suit in the district court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Board shall be prima facie evidence of the facts therein stated, and except that the plaintiff shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the plaintiff shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. If the Board shall determine that any party complainant is not entitled to an award of damages or less damages than are sought, an appeal from such determination may be taken to the district court specified herein within sixty days after entry of the Board's order: *Provided, however*, That a party receiving an award of damages shall combine any such appeal with any action brought under this subsection for enforcement of such award.

"(6)(A)(i) All actions at law by an air carrier or foreign air carrier subject to the provisions of this Act for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

"(ii) All complaints against such carriers for the recovery of damages not based on overcharges shall be filed with the Board within two years from the time the cause of action accrues, and not after, subject to subparagraph (iv).

"(iii) For the recovery of overcharges, action at law shall be begun or complaint filed with the Board against such carriers within three years from the time the cause of action accrues, and not after, subject to subparagraph (iv), except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

"(iv) If on or before expiration of the two-year period of limitation in subparagraph (ii) or the three-year period of limitation in subparagraph (iii) an air carrier or foreign air carrier subject to the provisions of this Act begins action under subparagraph (i) for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or charges are collected by the carrier.

"(B) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier and not after.

"(C) A complaint for the enforcement of an order of the Board for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

"(D) The term 'overcharges' as used in this section means charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Board.

"(E) The provisions of this subsection (c) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Board or any court by or against carriers subject to this part: *Provided, however*, That with respect to such transportation of property or passengers for or on behalf of the United States, the period of limitation herein provided shall be extended to include three years from the date of (i) payment of charges for the transportation involved, or (ii) subsequent refund for overpayment of such charges, or (iii) deduction made under section 322 of the Transportation Act of 1940 (49 U.S.C. 66), whichever is later.

"(7) In suits brought to enforce an order of the Board for the payment of money all parties in whose favor the Board may have made an award of damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant has his or its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff."

SEC. 8. The first sentence of subsection (a) of section 1006 of the Federal Aviation Act of 1958 (49 U.S.C. 1486) is amended to read as follows: "Any order, affirmative or negative, issued by the Board or Administrator under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act or any order in respect of reparations issued pursuant to section 901(c) of this Act, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia Circuit upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order."

SIMPLIFICATION OF GOVERNMENT TRANSPORTATION RATES AND PROCUREMENT; TRANSPORTATION OF MAIL BY MOTOR VEHICLE COMMON CARRIERS

SEC. 9. (a) Section 321 of title III, part II, of the Transportation Act of 1940, as amended (49 U.S.C. 65), is amended by—

(1) striking out the second proviso in subsection (a) thereof and substituting therefor the following: "*Provided further*, That the head of an agency or such persons as he may designate may negotiate the provisions and prices of contracts, agreements, or other instruments for the purpose of procuring transportation, including in the case of the Postmaster General,

mail transportation services performed by common carriers by motor vehicles when the services required can be procured from any common carrier lawfully operating in the territory where such services are to be performed, and services accessorial thereto for the United States, without regard to the provisions of any law requiring advertising for bids;"; and

(2) striking out subsection (b) thereof and substituting the following: "(b) Notwithstanding any other provision of law, the Administrator of General Services or such persons as he may designate on behalf of civil agencies, and the Secretary of Defense or such persons as he may designate on behalf of the military agencies may negotiate, agree to, contract for, engage, or otherwise establish simplified rate structures for the whole or for portions of transportation of persons or property and accessorial services procured for the United States for periods not to exceed one year but renewable for successive one-year periods: *Provided*, That the Administrator of General Services or the Secretary of Defense or their designees, have determined that the prospective simplified rate structure is in the public and Government interest and that the said structure may reasonably be expected to result in administrative and transportation costs to the United States lower or not substantially higher in the aggregate than costs normally applicable: *And provided further*, That such simplified rate structures shall initially entail research and experimentation in diminished differentiation among commodities, in methods for determination of distance through use of geographic grids and geometric formulas or other nontraditional techniques well suited to condensed tabulation or application of automatic data processing, and in the evaluation of charges over time periods as distinct from shipment-by-shipment evaluation, or by other appropriate departures from conventional rate construction, all for the purpose of devising practical systems to make rate publication and ascertainment less costly and more convenient. Federal transportation regulatory bodies shall, and other interested industrial, academic, or governmental agencies may, with the approval of the Administrator of General Services or the Secretary of Defense, as appropriate, observe, recognize, and employ to the maximum beneficial extent the techniques and results of said research and experimentation."

(b) Nothing contained in this section is intended to repeal or revise section 2631, title 10, United States Code.

TRANSFER OF POWERS VESTED IN INTERSTATE COMMERCE COMMISSION WITH RESPECT TO GUARANTY OF LOANS TO COMMON CARRIERS BY RAILROAD

SEC. 10. (a) Part V of the Interstate Commerce Act, as amended, is hereby repealed.

(b) It is the purpose of this section to provide for assistance to common carriers by railroad subject to the Interstate Commerce Act to aid them in acquiring, constructing, or maintaining facilities and equipment for such purposes, and in such a manner, as to encourage the employment of labor and to foster the preservation and development of a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense.

(c) For the purposes of this section—

(1) The term "Secretary" means the Secretary of Commerce.

(2) The term "Commission" means the Interstate Commerce Commission.

(3) The term "additions and betterments or other capital expenditures" means expenditures for the acquisition or construction of property used in transportation service, chargeable to the road, property, or equipment investment accounts, in the uniform system of accounts prescribed by the Commission.

(4) The term "expenditures for maintenance of property" means expenditures for labor, materials, and other costs incurred in maintaining, repairing, or renewing equipment, road, or property used in transportation service chargeable to operating expenses in accordance with the uniform system of accounts prescribed by the Commission.

(d) In order to carry out the purpose declared in subsection (b), the Secretary may, after consultation with and consideration of the views and recommendations of the Commission and upon terms and conditions prescribed by him and consistent with the provisions of this section, guarantee in whole or in part any public or private financing institution, or trustee under a trust indenture or agreement for the benefit of the holders of any securities issued thereunder, by commitment to purchase, agreement to share losses, or otherwise, against loss of principal

or interest on any loan, discount, or advance, or on my commitment in connection therewith, which may be made, or which have been made, for the purpose of aiding any common carrier by railroad subject to the Interstate Commerce Act in the financing or refinancing (1) of additions and betterments or other capital expenditures, made after January 1, 1957, or to reimburse the carrier for expenditures made from its own funds for such additions and betterments or other capital expenditures, or (2) of expenditures for the maintenance of property: *Provided*, That in no event shall the aggregate principal amount of all loans guaranteed by the Secretary, including loans previously guaranteed by the Commission, exceed $500,000,000.

(e) (1) No guaranty shall be made under subsection (d)—

(A) unless the Secretary finds that without such guaranty, in the amount thereof, the carrier would be unable to obtain necessary funds, on reasonable terms, for the purposes for which the loan is sought:

(B) if in the judgment of the Secretary the loan involved is at a rate of interest which is unreasonably high;

(C) if the terms of such loan permit full repayment more than fifteen years after the date thereof; or

(D) unless the Secretary finds that the prospective earning power of the applicant carrier, together with the character and value of the security pledged, if any, furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor and reasonable protection to the United States. A statement of the findings of the Secretary required under the provisions of this subsection shall be made a matter of public record by the Secretary with respect to each loan guaranteed under the provisions of this section.

(2) It shall be unlawful for any common carrier by railroad subject to the Interstate Commerce Act to declare any dividend on its preferred or common stock while there is any principal or interest remaining unpaid on any loan to such carrier made for the purpose of financing or refinancing expenditures for maintenance of property of such carrier, and guaranteed under this section.

(f) The Secretary may consent to the modification of the provisions as to rate of interest, time of payment of interest or principal, security, if any, or other terms and conditions of any guaranty which he shall have entered into pursuant to this section, or the renewal or extension of any such guaranty, whenever the Secretary shall determine it to be equitable to do so.

(g) (1) Payments required to be made as a consequence of any guaranty by the Secretary made under this section shall be made by the Secretary of the Treasury from funds hereby authorized to be appropriated in such amounts as may be necessary for the purpose of carrying out the provisions of this section.

(2) In the event of any default on any such guaranteed loan, and payment in accordance with the guaranty by the United States, the Attorney General shall take such action as may be appropriate to recover the amount of such payments, with interest, from the defaulting carrier, carriers, or other persons liable therefor.

(h) The Secretary shall prescribe and collect a guaranty fee in connection with each loan guaranteed under this section. Such fees shall not exceed such amounts as the Secretary estimates to be necessary to cover the administrative costs of carrying out the provisions of this section. Sums realized from such fees shall be deposited in the Treasury as miscellaneous receipts.

(i) (1) To permit him to make use of such expert advice and services as he may require in carrying out the provisions of this section, the Secretary may use available services and facilities of departments and other agencies and instrumentalities of the Government, with their consent and a reimbursable basis where necessary.

(2) Departments, agencies, and instrumentalities of the Government shall exercise their powers, duties, and functions in such manner as will assist in carrying out the objectives of this section.

(j) Except with respect to such applications as may then be pending, the authority granted by this section shall terminate at the close of June 30, 1963: *Provided*, That its provisions shall remain in effect thereafter for the purposes of guaranties made by the Secretary.

SEC. 11. (a) All orders, determinations, rules, regulations, permissions, approvals, agreements, rulings, directives, and privileges which have been issued, made, or granted, or allowed to become effective, by the Interstate Commerce Commission, or any court of competent jurisdiction, under any provision of law amended or repealed by section 10 of this Act, or in the exercise of duties, powers,

or functions which, under such section, are vested in the Secretary of Commerce, and which are in effect at the time such section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary of Commerce or by any court of competent jurisdiction, or by operation of law.

(b) The provisions of section 10 of this Act shall not affect any proceedings pending at the time such section takes effect before the Interstate Commerce Commission; but any such proceedings shall be continued before the Secretary of Commerce, orders issued therein, and payments made pursuant to such orders, as if section 10 had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Secretary of Commerce, or by operation of law.

(c) The provisions of section 10 of this Act shall not affect suits commenced prior to the date on which such section takes effect; and all such suits shall be continued by the Secretary of Commerce, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if section 10 had not been enacted. No suit, action, or other proceeding lawfully commenced by or against the Interstate Commerce Commission, or officer of the United States in relation to the discharge of official duties, shall abate by reason of any transfer of authority, power, or duties from the Commission or officer to the Secretary of Commerce under the provisions of section 10, but the court upon a motion or a supplemental petition filed at any time within twelve months, after such transfer, showing the necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the Secretary of Commerce.

SEC. 12. (a) The officers, employees, and property (including office equipment and official records) of the Interstate Commerce Commission which the Bureau of the Budget, after consultation with the Interstate Commerce Commission, shall determine to have been employed by the Interstate Commerce Commission, in the exercise and performance of those powers and duties vested in and imposed upon the Commission by section 2 of the Transportation Act of 1958, as amended, and which are vested by section 10 of this Act in the Secretary of Commerce, shall be transferred to the Department of Commerce upon such date or dates as the Bureau of the Budget shall specify: *Provided*, That the transfer of such personnel shall be without reduction in classification or compensation, except that this reqirement shall not operate after the end of the fiscal year during which such transfer is made to prevent the adjustment of classification or compensation to conform to the duties to which such transferred personnel may be assigned.

(b) Such of the unexpended balances of appropriations available for use by the Interstate Commerce Commission in the exercise of those powers and duties vested in and imposed upon it by section 2 of the Transportation Act of 1958, as amended, and which are vested by section 10 of this Act in the Secretary of Commerce, shall be transferred to the Department of Commerce upon such date or dates as the Bureau of the Budget shall specify, and shall be available for use in connection with the exercise and performance of the powers and duties vested in and imposed upon the Secretary of Commerce by section 10 of this Act.
shall be available for use by him to the same extent as if such records were originally records of the Secretary.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., April 29, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. HARRIS: This is in reply to your letter of March 15, 1963, requesting our comments on H.R. 4700, a bill to exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes.

If passed, this bill would exempt from minimum rate regulation the interstate transportation of (1) bulk commodities, (2) agricultural and fishery products, and (3) passengers. It would tend to equalize competitive opportunities between carriers of different modes of transportation and would permit the forces of competition to determine the charges paid by shippers for moving freight and the fares paid by passengers. At present, commodities moving in

bulk in interstate commerce by inland waterway are exempt from economic regulation. These commodities, when moved by railway and when moved by highway are not exempt. In addition, interstate transportation charges for moving unmanufactured agricultural commodities are not regulated if moved by for-hire motor trucks, but are regulated if moved by railroads or inland waterways (except in bulk by water).

The Department favors passage of this bill.

Our endorsement reflects our conviction that passage of H.R. 4700 would result in greater emphasis in transportation on the free operation of the forces of competition to set fair and reasonable rates and provide good service. By extending to all carriers some of the freedoms from economic regulation that many highway and waterway carriers now enjoy, greater competitive opportunity will result. Not only will this benefit common carriers but greater freedom of choice and greater flexibility in marketing their products will accrue to agricultural shippers.

As is well known, the Department and producers and shippers of farm products and supplies stand pretty much united in their support of the various arrangements made in the transportation laws many years ago to allow these unprocessed and bulk items to move in interstate commerce by highway and waterway at rates and charges and on delivery schedules agreed to exclusively by the shippers and carriers involved. These freedoms, we believe strongly, have benefited agriculture, the processors of these goods, and consumers of them.

While our primary interest is in maximizing net returns to producers, we are also interested in holding down processors' costs and the prices paid by consumers for these commodities. All of these factors influence the welfare of the Nation's farmers, in terms of prices they receive for what they sell, prices they pay for what they buy, and the size and location of the markets to which they can sell.

H.R. 4700 would permit the railroads and the regulated highway and inland waterway carriers to adopt any minimum rates suitable to them as individual carriers of agricultural and bulk commodities so long as those rates are not unjustly discriminatory or unduly or unreasonably preferential or prejudicial or (except for establishment under existing laws of through routes and joint rates applicable thereto) do not contravene the provisions of the antitrust laws. This will encourage managerial initiative in developing technological improvements and in providing needed service at reasonable rates as a means of attracting traffic. Such a result would be beneficial to the transportation industry, to agriculture, and to the economy generally.

The Bureau of the Budget advises that the enactment of this proposed legislation would be in accord with the President's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

DEPARTMENT OF AGRICULTURE,
Washington, D.C., April 30, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. HARRIS: This is in reply to your request of March 16, 1963, for our comments on H.R. 4701, a bill to provide for strengthening and improving the national transportation system, and for other purposes."

We favor passage of this bill. It is consistent with the goals set forth in the President's transportation message which emphasized the need for fast, safe, and economical transportation at the lowest cost consistent with the health, convenience, national security, and other broad public objectives.

Passage of this bill would (1) encourage experimentation by the carriers in matters of rates, charges, and services; (2) discourage discrimination by the carriers; (3) encourage the creation of through service and joint rates for freight; (4) discourage illegal motor carrier operations; (5) increase civil liabilities for violation of the transportation laws, and (6) transfer the financial assistance programs now under the jurisdiction of the Civil Aeronautics Board and Interstate Commerce Commission to the U.S. Department of Commerce.

Our only reservation concerning the provisions of this bill has to do with the proposed change in section 222(h). We agree that the penalty provisions in

the section are too low, but we believe the penalties being proposed in section 6 of the bill are too high for some circumstances. It is our opinion that the initial penalty of $500 plus as much as $250 per day is much too severe for minor safety violations and for failure to file various and sundry reports required by the Interstate Commerce Commission. We think the $500 penalty should be modified to allow the size of the penalty to reflect the severity of the violation. We agree that the penalty of $500 for the original violation is a reasonable maximum.

The Bureau of the Budget advises that there is no objection to the presentation of this report and that enactment of the proposed legislation would be in accord with the President's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., April 25, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letters of March 15 and 16, 1963, requesting the views of the Bureau of the Budget on H.R. 4700, a bill "To exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes," and H.R. 4701, a bill "To provide for strengthening and improving the national transportation system, and for other purposes."

In his transportation message of April 5, 1962, the President urged that the transportation facilities of the United States be viewed as a whole, that the same standards of regulation, taxation, and promotion (including public investment) be applied to all branches of the industry. The President emphasized increased reliance on competition among private transportation enterprises and reduced reliance on Government regulations. He called for equalization of taxation and Government promotional activities to assure all carriers an equal opportunity to compete. These policies represent the approach most likely to produce all needed services at the lowest possible costs to travelers and shippers. They would be implemented by the provisions of H.R. 4700 and H.R. 4701.

Accordingly, the Bureau of the Budget strongly urges the enactment of these bills as part of the administration's program.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

CIVIL AERONAUTICS BOARD, WASHINGTON, D.C., REPORT ON H.R. 4700 AND H.R. 4701

Mr. Chairman, the Civil Aeronautics Board appreciates this opportunity to present its views with respect to H.R. 4700 and H.R. 4701. These bills would exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and of passengers, and would provide for strengthening and improving the national transportation system.

The bills are substantially the same as H.R. 11583 and H.R. 11584, 87th Congress, implementing certain recommendations of the President in his message of April 5, 1962, which were supported by the Board at hearings before your committee on June 29, 1962.

The Board is in accord with the objectives of H.R. 4700 and H.R. 4701, but desires to comment on certain provisions relating to its functions and responsibilities.

H.R. 4700

H.R. 4700 would withdraw from the Board, the Federal Maritime Commission, and the Interstate Commerce Commission authority to determine that a rate or charge is lower than a reasonable minimum rate or charge in the transportation of bulk commodities and certain agricultural and fishery products by carriers subject to the jurisdiction of such agencies. Such authority also would be withdrawn from the Federal Maritime Commission and the Interstate Com-

merce Commission in the transportation of passengers. The Board would continue to have authority to impose a minimum level of fares for the transportation of passengers, but the bill provides that it is the intent of the Congress that regulatory control of minimum passenger fares of air carriers shall be reduced to the greatest extent consistent with the public interest in order that business incentives and competition may play a more influential role in the pricing of air transportation.

The bill specifically provides that each of the agencies retains all currently effective authority to determine whether such a rate, fare, or charge violates provisions against discrimination or undue or unreasonable preference or advantage. Moreover, carriers exempted from minimum rate regulation would except for the establishment of through routes and joint rates, be subject to the provisions of the antitrust laws with respect to such transportation. The agencies would be prohibited from granting exemptions from the operation of the antitrust laws with respect to agreements involving rates, charges, or fares for the transportation of such commodities or, in the case of surface transportation, of passengers.

In this connection, the bill would specifically amend section 414 of the Federal Aviation Act to provide that the antitrust immunity there conferred with respect to certain agreements approved by the Board shall not extend to the commodity rates here involved. It is not entirely clear, however, whether the Congress intends that enforcement of the antitrust laws in the courts shall be the exclusive remedy against conduct constituting antitrust violation, or whether the Board also is to have enforcement jurisdiction in this area. Under existing case law, those actions by air carriers which constitute violations of the antitrust laws in relation to air transportation also constitute unfair competitive practices within the meaning of section 411 of the Federal Aviation Act. On the face of the present bill, it would appear that the Board and the courts would have concurrent jurisdiction over such conduct and, if the Congress has some other intent, we believe it should be expressed in the legislation.

It is clear from the President's message and his letter of March 5, 1963, transmitting draft legislation to the Congress which led to introduction of the current bills, that the primary purpose of H.R. 4700 is to resolve problems of surface rather than air transportation. The President referred in his letter to the fact that the most significant recommendation in his message of the past year "dealt with the inequality resulting from exempt transportation of bulk commodities by water and agricultural products by truck" while "all traffic * * * moving by railroad is fully regulated." Furthermore, it is obvious that the airlines will not be able to transport many of the bulk commodities now moving by surface transport. It also may be expected that the costs of air transport would be comparable with the faster services provided, and hence higher than the surface rates for the same commodities. However, there are some commodities, such as agricultural and fishery products, which do move by air at the present time in significant amounts. Removing these commodities from minimum rate regulation by the Board as proposed would enhance the opportunity of shippers desiring to use air transportation to do so. Such an opportunity would be consistent with the statement in the President's message "that users of transport facilities should be provided with incentives to use whatever form of transportation which provides them with the services they desire at the lowest total cost * * *."

The Board stated in its testimony at the hearings before your committee in June of last year that the failure to withdraw authority from the Board to impose a minimum level of rates for the transportation of passengers was based on a recommendation in the President's message that it would be preferable in the case of the airlines to initiate a program of minimum rate control "on a gradual or temporary basis under the existing authority."

The Board also pointed out that the largest part of the traffic carried by the air transportation industry consisted of passengers and that elimination of minimum passenger rate regulation would have the practical effect of eliminating the great bulk of minimum rate controls in air transportation. In a subsequent letter to the committee, in response to an inquiry at the hearings, the Board stated that it was opposed to the elimination of its authority to prescribe minimum rates for passenger transportation for the reason, among others, that the air transportation industry, due to its precarious financial condition, should not be subjected to the additional hazard of uncontrolled rate cutting.

The Board continues to believe that elimination of passenger rate control would not be in the public interest at this time. Moreover, the Board is of the

opinion that the policy statement contained in the bill will enable it to take cognizance of the financial condition of the airlines, as well as provide for a gradual reduction in minimum rate control over the air transportation industry.

The Board recommends the enactment of section 5 withdrawing its authority to determine that a rate or charge is lower than a reasonable minimum rate or charge in the transportation of bulk commodities and certain agricultural and fishery products by air carriers, and declaring it to be the intent of the Congress that regulatory control over minimum passenger fares of air carriers be reduced to the greatest extent consistent with the public interest.

H.R. 4701

The Board is primarily interested in those provisions of H.R. 4701 relating to experiments by common carriers in rates (sec. 2), through service and joint rates and joint boards (sec. 4), reparations by air carriers for unlawfully high rates (sec. 7), and review of reparation orders of the Board (sec. 8). The Board also has a general interest in those provisions relating to the simplification of Government transportation rates (sec. 9).

Experiments by common carriers in rates

The Board, as well as the Federal Maritime Commission and the Interstate Commerce Commission, would be empowered and encouraged to authorize common carriers subject to their jurisdiction to experiment, under the agency's supervision and control, with new service combinations or arrangements, simplified documentation, and simplified rates bases and freight classifications. Experiments could be proposed by the carriers, shippers, or the regulatory agencies, involving carriers of the same mode or different modes, but participation by the carriers and shippers would be on a voluntary basis. Existing regulatory powers of the agencies would not be diminished, nor would the existing rights of carriers subject to the regulatory authority of such agencies be restricted.

The Board has authority at the present time to permit experimentation designed to improve service or provide lower costs, and has encouraged carrier experimentation in this respect. Areas of experimentation have included joint air/surface (air track) rates; half fares for domestic military furlough travel; excursion fares during offpeak times of the year, days of the week, or hours of the day; reduced rates for no-reservation or standby service; and special fares of various types for various foreign visitors.

Although the Board does not view section 2 as giving it additional authority to permit experiments, but rather as a statement of congressional intent that such experiments be authorized and encouraged, the provisions therein requiring that authorizations for experiments shall specify the duration, location, number, and scope of such would appear to be of assistance. The Board recommends, therefore, the enactment of this section.

Through service and joint rates; joint boards

The encouragement and promotion of through service and joint rates between carriers of all modes of transport would be declared to be in the national interest. Through service and joint rates by air carriers, common carriers subject to the Interstate Commerce Act, and water carriers subject to the Intercoastal Shipping Act, 1933, would be authorized. The Board, the Federal Maritime Commission, and the Interstate Commerce Commission would be directed to designate members to act as a joint board, in lieu of the CAB–ICC joint board presently authorized under the Federal Aviation Act, to consider matters relating to through service and joint rates. Tariffs specifying such joint rates would be filed by each participating carrier with the agency having regulatory jurisdiction over the portion of the through services to be performed by such carrier.

The Board testified at the hearings on H.R. 11583 and H.R. 11584 that it favored the enactment of similar provisions in such bills. However, in subsequent meetings held by the Chairmen of the three agencies, pursuant to a suggestion in the President's message, for the purpose of discussing regulatory problems affecting the various modes of transportation the conclusion was reached that further analysis and evaluation of the technical problems of joint rates and joint boards was desirable. Several meetings have been held between staff members of the three agencies in an effort to resolve these problems, and we expect to push forward with this program expeditiously. In general, discussions have related to such matters as the number of members from each agency necessary to constitute a quorum and to transact business, the rule of

ratemaking to be followed, the suspension of rates, and the precise powers of the joint board over intermodal transportation. It is believed that these questions and others will be resolved in the near future, and that the Board will be able to submit specific legislative proposals.

In these circumstances, the Board, although supporting the proposal in principle, defers its comments with respect to section 4, relating to joint rates and joint boards.

Reparations by air carriers for unlawfully high rates.

Section 901 of the Federal Aviation Act of 1958, relating to civil penalties, would be amended so as to make air carriers and foreign air carriers liable for the payment of damages to persons (including the United States as a shipper) injured by them as a result of charges collected, or practices maintained in connection therewith, in violation of sections 403 or 404 of the act. An injured party would have the choice of pursuing his remedy either before the Board or in any district court of the United States of comppetent jurisdiction. Appropriate periods of limitation are provided with respect to the commencement of such actions or proceedings.

These provisions stem from a recommendation in the President's message that "all common carriers, including freight forwarders and motor carriers, be required to pay reparations to shippers charged unlawfully high rates." Accordingly, under the proposed amendment to section 901, the Board would be authorized to award reparations for injuries resulting from (1) charges which are in excess of those in the carriers' published tariffs, (2) charges which are in the published tariffs but which are found to be unreasonable, and (3) charges which are discriminatory. Similarly, the Interstate Commerce Commission has submitted draft legislation to the Congress which would extend to shippers by motor carriers and freight forwarders subject to the Interstate Commerce Act the same rights of recovery which they now have againts rail and water carriers for such violations of the act.

The Board recommends the enactment of section 7 making air carriers and foreign air carriers liable for the payment of reparations to shippers charged unlawfully high rates.

In this connection, the current legislative program of the Board provides for the submission of legislation to the Congress which would accomplish this objective. However, in view of the provisions in H.R. 4701, the Board does not propose to submit legislation on this subject.

Review of reparation orders

Section 1006 of the Federal Aviation Act providing for review of the orders of the Board, with certain exceptions, by the courts of appeals of the United States would be amended so as to exclude orders relating to reparations from review by such courts.

This amendment is considered necessary in order that the review of such orders will be compatible with the provisions imposing reparations liability, which provide that suits for the enforcement of reparation orders, and appeals from determinations that parties are not entitled to damages, may be brought in the district courts of the United States.

The Board recommends, therefore, the enactment of section 8 excluding reparation orders from initial review by the courts of appeals of the United States.

Simplification of Government transportation rates

The Administrator of General Services and the Secretary of Defense, on behalf of the civil and military agencies, respectively, would be authorized to negotiate, contract for, or "otherwise establish" simplified rate structures for transportation services and accessorial services procured for the United States. One of the conditions precedent to the establishment of any such rate structure would be the conducting of research and experimentation for the purpose of devising practical systems to make rate publication and ascertainment less costly and more convenient. One of the stated objectives is the development of a system that would be suited to condensed tabulation or the application of automatic data processing. Federal transportation regulatory bodies would be required to "observe, recognize, and employ" to the maximum beneficial extent the techniques and results of such research and experimentation, while industrial, academic, and other governmental agencies would be authorized to do so.

The Board is in accord with the overall objective to provide for the development of a simplified rate structure for Government traffic. At the same time, the Board believes that it should retain its present authority to pass upon the

reasonableness of rates charged to the Government by air carriers under any simplified rate structure which may be developed. The proposed legislation does not in terms disturb the Board's authority in this respect, but it may be that the provision permitting the Government to "negotiate" or "contract for" a simplified rate structure could be interpreted as including authority to contract for the rate at which the services are to be provided. As indicated, the Board would be opposed to such a result. However, since last year's testimony on this proposal by the Department of Defense was to the effect that the provisions did not support such a construction and that there was no intention to attempt to prescribe rates, the Board interprets the provisions as leaving its powers over the rate level undisturbed. With that understanding, the Board does not object to the enactment of section 9.

This concludes my prepared statement on H.R. 4700 and H.R. 4701. I will be glad to answer any questions that you may have.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., May 7, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department concerning the following bills:

H.R. 4700, "To exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishing products, and passengers, and for other purposes";

H.R. 4701, "To provide for strengthening and improving the national transportation system, and for other purposes."

This Department strongly recommends enactment of both bills.

As you know, these bills were submitted to the Congress by the President on March 5, 1963, to implement certain recommendations contained in his transportation message of April 5, 1962. The bills are substantially the same as those introduced in the House last year as H.R. 11583 and H.R. 11584 on which extensive hearings were held by your committee. At those hearings the Department testified in considerable detail on both bills. If your committee has any further questions on the current bills, we will be pleased to answer them.

Enclosed for your information are copies of a letter of February 15, 1963, from the Secretary of Commerce to the President which accompanied the President's submission of the subject bills to the 88th Congress.

The Bureau of the Budget advised there would be no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

ROBERT E. GILES.

THE SECRETARY OF COMMERCE,
Washington, D.C., February 15, 1963.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: Submitted herewith are two proposed bills to implement certain recommendations contained in your message to the 87th Congress on April 5, 1962, concerning the transportation system of our Nation. Both bills are consistent with the primary objective of that message to achieve a more efficient and economical national transportation system by placing greater reliance on competition. The first bill would reduce regulation by exempting from minimum rate control, carriers not presently exempt in the carriage of bulk commodities, agricultural and fishery products, and intercity passengers. The second bill would:

(*a*) Authorize and encourage common carriers to conduct experiments in rate simplification, freight classifications, and new services;

(*b*) Extend to all shippers and carriers the right to ship vehicles and containers by any mode at nondiscriminatory rates;

(*c*) Encourage the establishment of through service and joint rates by all combinations of modes and assure the reasonableness of such rates;

(*d*) Provide for cooperative enforcement of highway transportation regulation by the ICC and the States;

(*e*) Increase and extend the civil forfeiture penalties to violations of safety regulations and operations without authority;

(*f*) Require air carriers to pay reparations to shippers charged unlawfully high rates;

(*g*) Authorize simplification of Government transportation rates and procurement and greater flexibility in the use of motor vehicle common carriers for the transportation of mail; and

(*h*) Transfer the existing railroad loan guarantee program from the ICC to the Department of Commerce.

These bills are substantially the same as those introduced in the last Congress (S. 3242 and S. 3243; H.R. 11583 and H.R. 11584). The only changes are necessary technical corrections. In order to keep these bills in the same form as those on which extensive hearings have been held, we have not incorporated proposals which you recommended in your message last year but which had previously been introduced in the Congress. It is recommended that you again endorse proposals to make domestic trunk air carriers ineligible for operating subsidies in the future, to require motor carriers and freight forwarders to pay reparations to shippers charged unlawfully high rates, to make motor carrier safety regulations applicable to private carriers, and to repeal the prohibition against rail carriers transporting commodities in which they have an interest.

As you have said, fundamental reforms in our national transportation policy are required now to achieve a fast, safe, and economical transportation system sufficient to meet our national economic and security objectives. Equality of opportunity for all forms of transportation is a keystone of this reform. Therefore, I recommend strongly that the Congress act favorably on these bills to strengthen and improve our national transportation system.

Respectfully yours,

LUTHER H. HODGES.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., April 26, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Department of Defense on H.R. 4700, 88th Congress, a bill "To exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes."

H.R. 4700 is one of two omnibus bills designed to strengthen and rationalize U.S. transportation by carrying out those recommendations in the President's transportation message of April 5, 1962, and again referred to and stressed in his transmittal letter to Congress of March 5, 1963, which called for legislative action.

The purposes of H.R. 4700 are to be accomplished by appropriate amendments to the Interstate Commerce Act, as amended, the Intercoastal Shipping Act, 1933, as amended; the Shipping Act, 1916, as amended; and the Federal Aviation Act of 1958. Certain groups of carriers would be exempted from minimum rate regulation in the transportation of bulk commodities, agrictultural and fishery products, and passengers. The practical effect of the extension would be to place the several modes on a substantially equal basis in competing for the business concerned. In the case of passenger transportation by air, minimum fare regulation would not be removed, but the bill includes an expression of the intent of Congress that regulatory control over minimum passenger fares of air carriers be reduced to the greatest extent consistent with the public interest. It is believed that, in the long run, competition among modes on an equitable basis will better promote efficiency and health in the transportation industry than competition under unequal conditions.

The Department of Defense favors early enactment of H.R. 4700 as a measure which should better accomplish in pertinent part the recommendations in the President's aforementioned transportation messages.

The fiscal effects of the enactment of H.R. 4700 cannot be ascertained at this time.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

JOHN T. MCNAUGHTON.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., April 30, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Department of Defense on H.R. 4701, 88th Congress, a bill "To provide for strengthening and improving the national transportation system and for other purposes."

H.R. 4701 is one of two omnibus bills designed to strengthen and rationalize U.S. transportation by carrying out those recommendations in the President's transportation message of April 5, 1962, and again referred to and stressed in his transmittal letter to Congress of March 5, 1963, which called for legislative action.

The Department of Defense favors early enactment of H.R. 4701 as a measure which should better accomplish in pertinent part the recommendations in the President's aforementioned transportation messages.

Section 7 of H.R. 4701 creates statutory civil liability for violations of the Federal Aviation Act by civil air carriers. Rail and water carriers are now subject to similar provisions included in the Interstate Commerce Act, as amended. H.R. 2594, 88th Congress, and its companion bill, S. 678, would extend these provisions to motor carriers and freight forwarders. These closely related proposals are essentially parts of the same program and should be considered together.

Section 9 of H.R. 4701, which provides for simplification of Government transportation rates and procurement, is of direct interest to the Department of Defense. Enactment of this section can lead to the significant acceleration and savings in the administrative processes involved in moving defense materials and personnel. The enactment of sections 2 and 9, which call for somewhat similar experimentation extending beyond Government traffic, should lead to a major reduction in transportation paper work by shippers, carriers, and Government agencies.

The fiscal effects of the enactment of H.R. 4701 cannot be ascertained at this time.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

JOHN T. MCNAUGHTON.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, April 29, 1963.

The Honorable OREN HARRIS,
Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: We refer again to your letter of March 16, 1963, in which you request our comments on H.R. 4701.

H.R. 4701, a bill to provide for strengthening and improving the national transportation system and for other purposes, is designed to help develop a more efficient and dynamic transportation system, vital to our domestic growth productivity and progress. Most of its provisions are based on legislative recommendations contained in the President's message on the transportation system of our Nation, House Document 384, 87th Congress, 2d session, April 5, 1962. We note that similar recommendations are contained in the President's letter of March 5, 1963, to the Honorable Lyndon B. Johnson, President of the Senate, and the Honorable John W. McCormack, Speaker of the House of Representatives. Similar legislative proposals, also based on the President's message, were introduced in the 87th Congress (S. 3242 and H.R. 11584, and your committee held

extensive hearings on H.R. 11584, during June, July, and September 1962. The Senate Committee on Commerce held hearings on S. 3242 during June, July, August, and September 1962. In our letter of July 3, 1962, B–104930, to you, we recommended favorable consideration of H.R. 11584 by your committee.

We have the following comments on the various sections of H.R. 4701:

SECTION 2

This section of the bill is based on part I(A)(6) of the President's message and would empower and encourage the transportation regulatory agencies to authorize experiments by common carriers in rate, classification, and documentation systems. The experiments may be initiated by carriers, shippers, or the regulatory agencies, would be voluntary, and could involve individual common carriers or intramodal and intermodal transportation systems.

We favor the enactment of this section since we believe that it could serve to stimulate both carriers and the regulatory agencies to more vigorously exercise their responsibility to both Government and commercial shippers in seeking ways to constantly improve the quality of their services through utilization and adaptation to transportation of modern technical advances.

We would have a particular interest in experiments concerning simplified documentation, different or simplified rate bases or freight classifications because they could affect our audit of transportation payments under section 305 of the Budget and Accounting Act, 1921, as amended, 31 U.S.C. 71, and under section 322 of the Transportation Act of 1940, as amended, 49 U.S.C. 66. Our Office is continually concerned with simplification of all types of Government accounting documents and has cooperated with the Department of Defense, the General Services Administration, and other agencies and Government corporations in a number of projects for the better utilization of existing means of transportation and for documentary simplification. For example, in recent months we worked with the Defense Traffic Management Service, Defense Supply Agency, Department of Defense, in their Development of Advanced Rate Techniques (DART) program. We cooperated with them in the establishment of rates on tactical unit movements of military impediments in eastern territory and southern territory which were negotiated with the carriers concerned under section 22 of the Interstate Commerce Act, as amended, 49 U.S.C. 22.

We would understand that experiments authorized under section 2 of the bill still would be subject to applicable laws to the extent that the experiments might affect shipper-carrier relationships; for example, a shipper would not be deprived of the right reserved to him under existing law to challenge the reasonableness or the applicability of particular experimental rate bases and clarifications to transportation paid for by him.

Section 2(b) of the bill outlines the method by which the regulatory agencies would authorize experiments after notice to the public affording interested persons opportunity to submit written views. We think that the present language leaves some doubt as to whether notice to the public is all that is required prior to authorization of an experiment, whether views of interested persons will be collected prior to the authorization, and whether effect should be given to such views in the determination of the desirability or possible value of an experiment. Control and careful supervision are provided only after the experiment is authorized; procedures and considerations prior to authorization should also be carefully planned and programed.

SECTION 3

This section would amend sections 2, 216(d), 305(c) of the Interstate Commerce Act, 49 U.S.C. 2, 316(d), and 905(c), to prohibit unjust discrimination by rail, motor, and water common carriers against other carriers as to services or rates in the transportation of loaded or empty vehicles or shipping containers. The section embodies Part I(A)(4) of the President's message proposing that legislation be enacted to assure all carriers the right to ship vehicles or containers on the carriers of other branches of the transportation industry at the same rates available to noncarrier shippers.

If enacted, this section apparently would have a bearing on decisions of the Interstate Commerce Commission concerning so-called piggyback services. See, for example, *Substituted Freight Service*, 232 I.C.C. 683 (1939), in which the Commission stated that one could not act as a common carrier by motor vehicle and a a shipper by rail as to the same shipment; and *Movement of Highway*

Trailers by Rail, 293 I.C.C. 93 (1954), in which the Commission found that motor contract carriers could not lawfully make use of any piggyback services.

The changes proposed in section 3 of this bill would not affect the functions and activities of the General Accounting Office and, in our opinion, would not adversely affect the United States as a shipper and we therefore recommend their favorable consideration by your committee.

SECTION 4

Section 4 of the bill provides for the establishment of through service, joint rates and joint boards and is based on a recommendation contained in part I(D)(2) of the President's message. We are in accord with the idea of intermodal joint rates and through service. However, in the interests of uniformity, we feel that the proposed amendments to section 1003(d) of the Federal Aviation Act of 1958, beginning on page 6, line 18, of the bill, might well be revised to include authority equivalent to that contained in section 22 of the Interstate Commerce Act, 49 U.S.C. 22, at least to the extent that its relates to persons or property of the United States. Section 22 permits rail common carriers to carry, store, or handle property "free or at reduced rates" for the United States, among other shippers, and has been incorporated by reference into parts II, III, and IV of the Interstate Commerce Act, dealing respectively with motor carrier, water carriers, and freight forwarders. See 49 U.S.C. 317(b), 906(c), and 1005(a). In the broader view we favor the amendment of section 403(b), 49 U.S.C. 1373(b), to reflect similar authority in air carriers to transport persons or property for the United States free or at reduced rates.

The proposed amendment of section 1003(f) provides that any joint board shall have the same powers which section 216 of the Interstate Commerce Act confers upon the Interstate Commerce Commission in respect to common carriers of property by motor vehicle. Since section 216 of the Interstate Commerce Act does not provide for reparation awards for unlawful rates and charges on past shipments, this would leave shippers without any right to challenge the lawfulness of payments on those shipments. A cross-reference to section 308, 49 U.S.C. 908, or additional specific language in proposed paragraph (e), page 7 of the bill, for the purpose of establishing reparation procedures, would suffice to reserve the requisite powers to joint boards. We note that H.R. 2594, introduced by you in this session, would require motor common carriers and freight forwarders to pay reparations to shippers who have been charged unlawfully high rates and that section 7 of this bill (H.R. 4701) proposes a similar reparations procedure with respect to air carriers subject to the Federal Aviation Act of 1958.

SECTION 5

Section 5 would amend section 205(f) of the Interstate Commerce Act, 49 U.S.C. 305(f), to authorize the Interstate Commerce Commission to make cooperative agreements with the various States to enforce State economic and safety laws relating to highway transportation. We understand that the purpose of the section is to help eliminate unlawful ("gray area") trucking operation. The enactment of this section of the bill would not affect the functions and operations of our Office. It seems to be in the public interest and we would have no objection to its enactment.

SECTION 6

This section implements in part legislative recommendation No. 12, pages 206 and 207 of the Interstate Commerce Commission's 76th Annual Report. It proposes to amend section 222(h) of the Interstate Commerce Act, 49 U.S.C. 322(h), by extending the civil forfeiture provisions of the act to unlawful operations and safety violations by motor carriers and by increasing the dollar amount for the forfeitures. A similar bill, S. 682 has been introduced in this session of Congress at the request of the Interstate Commerce Commission.

The proposed section, if enacted into law, would not affect the functions or operations of our Office. It seems to be in the public interest and we see no objection to its receiving favorable consideration by your committee.

SECTIONS 7 AND 8

Section 7 of the bill proposes to amend section 901 of the Federal Aviation Act of 1958, 49 U.S.C. 1471, to subject air carriers to civil liability for violations

of the act and to establish various time limitations on actions by and against air carriers or foreign air carriers subject to the Act. Section 8 would amend section 1006 of the Federal Aviation Act of 1958, 49 U.S.C. 1486, to provide for the exclusion from the general procedure relative to review of Civil Aeronautics Board orders by Federal courts of appeals the review of any order concerning reparations issued pursuant to the reparations provisions contained in section 7.

The subjection of regulated carriers to civil liability for violation of regulatory acts is a question that in recent years has received considerable attention from all concerned in the transportation industry. In May 1959, in *T.I.M.E., Inc.* v. *United States*, 2359 U.S. 454, the Supreme Court decided that shippers, including the United States, paying unlawful charges for motor common carrier transportation, are with redress because part II of the Interstate Commerce Act does not contain reparations provisions similar to those in part I of the act; but in November 1962, in *Hewitt-Robins, Inc.* v. *Eastern Freight-Ways, Inc.*, 371 U.S. 84, a suit involving an unreasonable practice (carrier misrouting), the Court concluded that *T.I.M.E.* did not control; that whether a common law remedy survived enactment of part II of the act depends on the effect of the exercise of the remedy up on the statutory scheme of regulation; that even though the carrier misrouting resulted in the exaction of excess charges, it raised not a question of rates, but one of routes; that a remedy for misrouting was not inconsistent with the statutory scheme of regulation; and that such a remedy, therefore, survived the passage of the act.

Since the decision in the *T.I.M.E.* case, several bills have been introduced which would subject motor common carriers and freight forwarders (part IV of the Interstate Commerce Act, pertaining to freight forwarders, likewise contains no reparations provisions) to civil liability for violations of the provisions of the act. For example, see H.R. 2594, introduced by you in this session of Congress, and S. 678, also introduced in this session. That part of section 7 of H.R. 4701 which amends section 901 of the Federal Aviation Act of 1958 by adding sections 901(c)(1) through 901(c)(5) would provide a similar remedy for shippers who are forced to pay unlawful charges for air carrier transportation.

We believe that neither the United States nor private shippers should be required to pay transportation charges to any regulated carrier without the corresponding right, in proper circumstances, to challenge the lawfulness of those payments on past shipments. The enactment of the reparations part of section 7 of this bill, along with the enactment of H.R. 2594, would broaden the uniformity in the treatment of regulated carriers for civil liability for violations of the Interstate Commerce Act and of the Federal Aviation Act of 1958. See, in this connection, our letter of March 29, 1963, to you, commenting on H.R. 2594, in which we recommend favorable consideration of that bill. We, therefore, recommend favorable action on the reparations provisions of section 7 and of section 8 of this bill.

Under the present laws, similar time limitation periods are applicable to actions by and against all carriers subject to the Interstate Commerce Act. See sections 16(3), 204a, 308, and 406a of the act, 49 U.S.C. 16(3), 304a, 908, and 1006a. The part of section 7 which amends section 901 of the Federal Aviation Act of 1958 by adding sections 901(c)(6) through 901(c)(7) would provide the same limitation periods to actions involving "Air carriers," or "Foreign air carriers," subject to the Federal Aviation Act of 1958. We favor the enactment of this limitation provision since it would complete a uniform pattern of limitation of actions for all carriers regulated by the Interstate Commerce Act and for air carriers regulated by the Federal Aviation Act of 1958.

SECTION 9

This section of the bill would provide for the simplification of Government transportation rates and procurement and for the transportation of mail by motor common carriers. It is designed to encourage the development of simplified rate structures and systems for Government transportation, adaptable to automatic data processing and separate and distinct from the complex system prevailing in the case of commercial transportation. The simplified rate system would be accomplished by (1) authorizing the procurement of Government transportation from all modes of carriers, without regard to any law requiring formal advertised bidding procedures and (2) providing for the initiation and establishment through progressive research and development of a simplified rate structure for Government traffic. It implements a recommendation contained in part I(D)(3) of the President's message. Section 9 also would give the Post Office

Department greater flexibility in the use of motor common carriers for the transportation of mail, a provision based on a recommendation contained in part I(C) (4) of the President's message.

While under present laws the Post Office Department may use the services of rail, air, and water carriers for the transportation of mail on a tariff rather than on contract bid basis, we held in 39 Comp. Gen. 485 (B–141203, Dec. 30, 1959, to the Postmaster General), that it had not such authority with respect to the transportation of mail by motor common carrier. The decision was based in part on an examination of the legislative history of section 321(a), title III of the Transportation Act of 1940, as amended, 49 U.S.C. 65(a), which does not disclose any intent to include transportation of mail by motor common carrier.

To the contrary, we found that mail transportation services are covered by special legislation which sets out detailed criteria and requirements concerning the means and methods of its distribution and transportation. We stated in the decision that, in our opinion, an extension by statutory construction of the exception provided by the last proviso of 49 U.S.C. 65(a) to mail transportation services was not warranted and that if such an exception is found necessary or desirable, amendatory legislation should be obtained.

If this part of H.R. 4701 is to be favorably considered, we believe that some limitation upon the term of the contracts which the Postmaster General would be authorized to negotiate is desirable: It would compel management to take action at specified intervals to renew, modify or terminate contracts for mail transportation services. President postal laws contain time limitations on contracts for mail transportation. For example, see title 39, U.S. Code, sections 6405 and 6408.

The idea of simplifying the common carrier rate and classification system for the purpose of adapting it more readily to the requirements of automatic data processing is deserving of serious study and development. Perhaps as important, however, is the need to make this system more understandable and more capable of convenient application for the user of common carrier transportation service. Its present-day complexities impair its usefulness in business and Government for budget, research, and other purposes.

The first proviso in section 9(a) (2) of the bill requires a determination by the Administrator of General Services or the Secretary of Defense that a prospective simplified rate "structure may reasonably be expected to result in administrative and transportation costs to the United States lower or not substantially higher in the aggregate than costs normally applicable." (Page 18, lines 12–16.) We feel that the phrase "or not substantially higher in the aggregate" may be too indefinite and possibly should be changed to reflect the concept that normally applicable transportation costs on given shipments are usually determinable from the tariffs required to be published and filed with the regulatory agency concerned.

SECTIONS 10 THROUGH 13

These sections of the bill, which are based on a recommendation contained in part I(C)(5) of the President's message, propose to transfer to the Department of Commerce the railroad loan guarantee authority of the Interstate Commerce Commission. Provisions also are included for the continuance of actions taken by the Commission unless or until changed by the Secretary of Commerce, and for the transfer of persons, property, records and unexpended appropriations from that agency to the Department of Commerce. We note that administration of the aircraft loan guarantee authority set forth in the act of September 7, 1957, Public Law 85–307, 71 Stat. 629, was transferred from the Civil Aeronautics Board to the Secretary of Commerce by the act of October 15, 1962, Public Law 87–820, 76 Stat. 936, and that section 5(b) of Public Law 87–820, contained this provision:

"The Secretary shall make available to the Comptroller General of the United States such information with respect to the loan guarantee program under this act as the Comptroller General may require to carry out his duties under the Budget and Accounting Act, 1921."

During a review of the Interstate Commerce Commission's administration of the loan guarantee program we were denied access to certain records which we believed were necessary for us to make an adequate, independent, and objective examination of the administration of this program. We furnished our report (B–133319, July 18, 1962), on this denial to the chairman of the House Committee on Interstate and Foreign Commerce, the Special Government Information Subcommittee of the House Committee on Government Operations,

the Senate Committee on Commerce, and the Subcommittee on Constitutional Rights, Senate Committee on the Judiciary.

We believe that determinations as to whether loans should be guaranteed under part V of the Interstate Commerce Act, 49 U.S.C. 1231–1240, or a successor act, are executive determinations, which contingently commit the Government to the expenditure of public funds and are subject to audit by our Office.

Although we believe existing laws are adequate to require the cooperation of the agency involved, in view of the denial of access to records on the loan guarantee program under part V of the Interstate Commerce Act, we strongly urge that a provision similar to section 5(b) of Public Law 87–820 be included as subparagraph (3) in section 10(i) of this bill.

We also note that section 10 would not expressly grant the Secretary of Commerce or the Comptroller General the right to examine pertinent books, records, and documents of the applicant carriers. We believe that access to records of the applicant carriers is necessary for the adequate administration and audit of a loan guarantee program and we therefore suggest that the bill be amended by adding a section similar to section 393(b) of Public Law 87–447, 76 Stat. 66, which may read:

"The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient carrier that are pertinent to assistance received under this section."

The transfer of the Commission's loan guarantee authority to the Department of Commerce would not affect the functions or operations of our Office. Enactment of the section seems to be in the public interest because it will remove from the Interstate Commerce Commission promotional transportation activities possibly better suited for administrative purposes in an executive agency and we see no objection to its receiving favorable consideration by your committee.

In summary, subject to the suggestions indicated above, we recommend favorable consideration of the bill by your committee. We plan to have a representative of our Office testify on H.R. 4701, if arrangements may be made for his appearance on the schedule for hearings beginning on April 30, 1963.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., April 26, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of March 16, 1963, requested the views of the General Services Administration on H.R. 4701, 88th Congress, a bill "To provide for strengthening and improving the national transportation system, and for other purposes."

This legislative proposal which the President transmitted to the Congress by letter dated March 5, 1963, would implement certain recommendations contained in his message to the Congress of April 5, 1962, concerning the transportation system of our Nation. Except for certain technical adjustments the bill is identical with H.R. 11584, 87th Congress, on which your committee held extensive hearings last year.

H.R. 4701 would provide specific actions for strengthening the common carrier system and for improving competitive conditions. Section 9 of the bill would implement a proposal contained in the legislative program of the General Services Administration for the 88th Congress, 1st session. This section, which deals with the simplification of Government rates and the procurement of transportation services by the Government, is of particular interest to GSA as this Agency is concerned with transportation and traffic management on behalf of executive agencies from the viewpoint of a user of transportation services pursuant to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481).

Since H.R. 4701 would benefit users of transportation services by strengthening and improving the national transportation system, the General Services Administration strongly recommends enactment of this legislative proposal.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee and that the enactment of H.R. 4701 would be in accord with the program of the President.

Sincerely yours,

LAWSON B. KNOTT, Jr.,
Acting Administrator.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 27, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. HARRIS: Your committee has requested this Department's report on H.R. 4700, a bill "To exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes." We urge the enactment of this legislation which is designed to implement the President's policy on transportation.

Section 1(a) of H.R. 4700 would amend section 1 of the Interstate Commerce Act, as amended (49 U.S.C. sec. 1) to provide that the Interstate Commerce Commission, notwithstanding any other provisions of the act, supra, is not authorized or empowered to determine if the rates, fares, or charges for the interstate transportation of certain bulk commodities, including coal, oil, and gas, and agricultural and fishery commodities are lower than a reasonable minimum rate, fare, or charge. The Commission will, however, retain all currently effective authority and power to determine if a rate, fare, or charge is in violation of the provisions against unjust discriminatio, or undue or unreasonable preference or advantage. Provision is also made to prohibit any carrier or carriers exempted by this bill from engaging in any act, practice, or conduct or being a party to any arrangement, contract, combination, or conspiracy contrary to the provisions of the antitrust laws. However, this would not prohibit a common carrier from enterinng into agreements in accordance with section 5a of the Interstate Commerce Act, as amended (49 U.S.C. sec. 5b).

Section 1(b) of H.R. 4700 would amend section 5a of the act, supra, to provide that parties to any agreement approved by the Commission under section 5a of the act, and other persons, are relieved from the operation of the antitrust laws concerning the making of, and the carrying out of, such agreements in accordance with its provisions and those of the Commission, except that such relief shall not extend to any party to an agreement with respect to any rate, charge, or fare for transporting agricultural, fishery, or bulk commodities or passengers.

Presently section 303(b) of the Interstate Commerce Act, as amended (49 U.S.C. sec. 903(b)) exempts common water carriers from regulation in the transportation of bulk commodities when the cargo space of the transporting vessel is being used to carry not more than three such commodities. Thus, in practice the bulk water transportation rates for such mineral commodities as sulfur, coal, and sand and gravel are determined by competitive factors.

Section 2 of H.R. 4700 amends section 303(b) of the act, supra, by removing the restrictions that a transporting vessel may carry not more than three bulk commodities. The effect of this to place all common water carriers of bulk commodities in a more competitive position. We believe that this is desirable.

Section 3 of H.R. 4700 would amend section 418 of the Interstate Commerce Act, as amended (49 U.S.C. sec. 1018) so as to authorize freight forwarders to use the services of common carriers engaged in the transportation of bulk commodities and agricultural and fishery commodities exempted under the provisions of section 1(23) or 303(b) of the Interstate Commerce Act.

The principal effect of section 4 of H.R. 4700 is that it would amend the Intercoastal Shipping Act, 1933, as amended (46 U.S.C. sec. 843 et seq.) by inserting a new section, which would provide that the Federal Maritime Commission shall not have the authority or power to regulate minimum rates and charges of domestic water carriers in the transportation of commodities in bulk and agricultural and fishery commodities and passengers.

Similarly, section 5 of the bill would amend section 1002 of the Federal Aviation Act of 1958, (49 U.S.C. sec. 1482) to provide that the Federal Aviation Agency shall not have the authority or the power to regulate minimum rates and charges

of air carriers transporting commodities in bulk and agricultural and fishery commodities.

In his transportation message to the Congress on April 5, 1962 (see H. Doc. 384, 87th Cong., 2d sess.), President Kennedy stated in part:

"At present, the transportation of bulk commodities by water carriers is exempt from all rate regulation under the Interstate Commerce Act, including the approval of minimum rates; but this exemption is denied to all other modes of transportation. This is clearly inequitable both to the latter and to shippers and it is an inequity which should be removed. Extending to all other carriers the exemption from the approval or prescription of minimum rates would permit the forces of competition and equal opportunity to replace cumbersome regulation for these commodities, while protecting the public interest by leaving intact the ICC's control over maximum railroad rates and other safeguards (such as the prohibition against discrimination, and requirements on car service and common carrier responsibility).

* * * * * * *

"An exemption similar to that described above, and now available only to motor carriers and freight forwarders, relates to agricultural and fishery products. This exemption from minimum rates should also be extended to all carriers. Here, too, the ICC should retain control of maximum railroad rates and certain other controls, to protect the public interest in those areas where there is no effective truck or water carrier competition to keep rates down.

"The combined effect of extending these bulk and agricultural exemptions will be to reduce drastically and equalize fairly the regulation of freight rates in this country. Freed to exercise normal managerial initiative, carriers will be able to rationalize their operations and reduce costs; and shippers should consequently enjoy a wider choice, improved service and lower rates."

These points were reiterated in the President's message to the Congress on transportation on March 5, 1963. In this massage he transmitted legislation designed to eliminate the existing inequality, although he also suggested an alternative that "* * * Congress could elect to place all carriers on an equal footing by repealing the existing exemption * * *". H.R. 4700 is designed to carry out the President's first approach by extending the exemption to all carriers.

The effects on the fishing industry of removing minimum rate regulations as provided in H.R. 4700 are likely to be insignificant, although the railroads may be benefited. We believe, however, that the alternative approach of removing the motor carrier exemption of fishery products is generally undesirable, especially to the commercial fishing industry. Adequate service to the fishing industry is available only through motor carrier service exempt from regulation.

Fish are landed at many points not served by regulated carriers, and there is some question whether these points could attract regulated carriers. A definite requirement exists for direct service as the highly perishable product will not usually withstand transshipment. Because of the variations in weather and the natural habits of fish, production cannot be scheduled as to exact times and places. Therefore, a flexible transportation system is needed. This flexibility may include the offering of more stopoffs enroute than are allowed in the case of the regulated carriage, in order to facilitate rapid distribution of fishery products. To require regulated carriers to provide service where there are unpredictable peaks and valleys of traffic movement could cause such carriers to maintain unprofitable services during the low periods. Accordingly, we again urge the enactment of H.R. 4700.

The enactment of this legislation will involve no additional costs to this Department.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., April 29, 1963.

The Honorable OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN HARRIS: This is in response to your request for a report and comments on H.R. 4700 which would repeal the Commission's minimum rate

power insofar as it applies to the transportation of bulk commodities and agricultural and fishery products. This matter has been considered by the Commission and I am authorized to submit the following comments on its behalf:

H.R. 4700 is substantially the same as H.R. 11583, introduced by you in the 87th Congress to implement, in part, the proposals contained in the President's transportation message to Congress on April 5, 1962, except that certain language hereafter discussed has been added.

In testifying at the hearings on H.R. 11583 before your committee on July 10, 1962, former Chairman Rupert L. Murphy staged that the Commission favored repeal of the water-carrier bulk commodities exemption in section 303(b) of the act—an alternative approach proposed by the President—and that the motor-carrier agricultural commodities exemption in section 203(b)(6) should be limited to transportation from the farm to local markets. Similar recommendations were made in the Commission's 76th Annual Report (legislative recommendations Nos. 7 and 14); and bills implementing those recommendations were introduced by you as H.R. 5201 and H.R. 5549, respectively.

Adopting the language of the President, we wholeheartedly agree that "The basic objective of our Nation's transportation system must be to assure the availability of the fast, safe, and economical transportation services needed in a growing and changing economy to move people and goods, without waste or discrimination, in response to private and public demands at the lowest cost consistent with health, convenience, national security, and other broad public objectives." We are also in complete accord with the view that "This basic objective can and must be achieved primarily by continued reliance on unsubsidized privately owned facilities, operating under the incentives of private profit and the checks of competition to the maximum extent practicable * * * [and that] the role of public policy should be to provide a consistent and comprehensive framework of equal competitive opportunity that will achieve this objective at the lowest economic and social cost to the Nation."

Over the years, we have endeavored to achieve these objectives by impartially regulating the various modes of transportation under existing provisions of the Interstate Commerce Act, but there can be little doubt that our efforts have been severely hampered by the existence of the bulk and agricultural commodity exemptions which we consider to be the Achilles heel of sound economic regulation. These statutory exemptions undoubtedly place regulated common carriers, especially the railroads, at a disadvantage in competing with unregulated motor and water cariers in the transportation of bulk and agricultural commodities.

While our reasons for favoring repeal of the bulk commodities exemption and the imposition of a reasonable limitation on the agricultural products exemption were set forth in some detail by former Chairman Murphy in his testimony before your committee last year, and which we now reaffirm, it may be that an additional discussion of certain aspects of that testimony pertaining to the proposed repeal of the Commission's power to prescribe reasonable minimum rates would be helpful to the committee in its consideration of H.R. 4700.

A source of some controversy and no little confusion, particularly among shipper interests, involves the extent of the Commission's authority to prescribe rates on bulk and agricultural commodities under other sections of the Interstate Commerce Act, in the event those commodities are totally exempted from minimum rate regulation. In other words, can the Commission require the maintenance of a stable and nondiscriminatory rate structure under existing provisions of the act in the absence of the minimum rate power? That the answer to this question is not clear to some may account for the addition of the following language to H.R. 4700 which was not a part of H.R. 11583:

"The Commission, however, shall retain all currently effective authority and power to determine that such a rate, fare, or charge is in violation of applicable provisions against unjust discrimination, or undue or unreasonable preference or advantage."[1]

In considering the Commission's power under sections 3(1) and 15(1) it must be remembered that, generally, the prohibition against undue prejudice therein does not apply unless both the prejudiced and preferred transportation services are performed *under substantially similar circumstances and conditions*. Thus the prohibition would not apply in the following two highly important situations: (1) when the same carrier or same group of carriers do not effectively

[1] Quite apart from other considerations, we have serious doubt that the added language is adequate to accomplish its stated purpose, since power to *determine* is not synonymous with power to require *compliance* with such a determination.

participate in the rates on *both* the prejudiced traffic and the preferred traffic, and (2) when the rate prejudice in question results from carrier competition at one point and the absence of such competition at another point.

In the first situation, when a railroad or railroads moving bulk or agricultural commodities from preferred origins to particular destinations are different from those transporting these commodities from the prejudiced origins to the same destinations, the shippers at the latter origins could not obtain any relief under the law of undue prejudice in sections 3(1) and 15(1) of the act. This is true under the Commission's *current* power to correct prejudicial rate adjustments, and it follows that the retention of that *same* power would still leave the prejudiced shipper without remedy under the law of undue prejudice of the act. Under its minimum rate power the Commission could, on an adequate record, alleviate the situation to the extent of prescribing reasonable minimum rates. The Commission in the preceding instance would, of course, be without power to take effective action if the minimum rate power was repealed. Thus if H.R. 4700 is enacted, rates on bulk or agricultural commodities from the preferred origins to certain destinations could be substantially reduced—even below out-of-pocket costs—and a higher reasonable level continued in effect from the prejudiced origins to the same destinations. These situations have frequently occurred in the past and there is every reason to believe that they will occur with increasing frequency in the event the minimum-rate power, which has served as a deterrent to such action, is repealed.

It is equally well established that the existence of carrier competition at one point and its absence at another point creates a *dissimilarity* of circumstances and conditions which generally renders inapplicable the prohibition against undue prejudice within the meaning of sections 3(1) and 15(1). To put it another way: Where such dissimilarities occur, the resulting shipper rate prejudice is not undue within the meaning of the present law.

The result is that the Commission today generally has no effective control under sections 3(1) and 15(1) over rate disadvantages and preferences resulting from rate relationships as between depressed carrier-competitive rates and noncompetitive normal rates. This does not necessarily mean, of course, that special and unusual conditions may not justify special treatment in particular cases, but the principal concern here is with the well-established general rules under the law of undue prejudice.

The Commission's minimum-rate power under sections 1 and 15(1) is used frequently in controlling destructive and damaging rate wars and in preventing "unfair or destructive competitive practices" within the meaning of the national transportation policy declared in the Interstate Commerce Act. The repeal of the minimum-rate power would allow carriers on the exempted traffic to lower their rates below their out-of-pocket costs for performing the service. This, in turn, unquestionably would result in a greater spread between carrier-competitive and noncompetitive rates in many situations—a principal cause of economic regulation initially.

Another area of some possible misunderstanding is that in addition to exempting the transportation of bulk and agricultural commodities from the minimum-rate power, H.R. 4700 provides that the exempted carriers shall be subject to the provisions of the antitrust laws, the implication being that the latter would at least tend to serve the same purpose. We seriously question whether the antitrust laws can provide adequate safeguards in intermodal competitive cases where the low-cost mode, for example, is deprived of its inherent advantage by destructive competition in the form of rate reductions by the high-cost mode resulting in rates that are less than the latter's out-of-pocket costs for performing the service involved. Intermodal competitive cases are, generally speaking, by far the most complex, most bitterly contested, and in some instances the most perplexing proceedings which this Commission is called upon to decide. Technical matter such as cost exhibits, traffic studies, etc., are frequently extensive and there can be little doubt but that a great burden would be placed on the courts, whose dockets we understand are already crowded. The following excerpt from the testimony of former Chairman Murphy, at page 125 in the printed report of the committee hearings last year, is illustrative of the problems which we fear will occur under the antitrust laws:

"Without the minimum rate powers now possessed by the Commission, we do not believe that reliance upon the antitrust laws to prevent or stop destructive rate wars and to protect shippers and localities against unjust discrimination and undue prejudice and preference is adequate. With the hundreds of thousands of rate adjustments made each year, irreparable damage might be suffered

by shippers, carriers, and localities before corrective steps could be taken under the antitrust laws. It is true that injunctive relief might be available. However, we are not aware of any present proposals to establish a means of screening these adjustments prelminary to bringing suits for an injunction whenever and wherever needed. The action under those laws might be too late. Before such injunctive relief could be obtained, there would have to be a determination that such relief was justified, and that determination would have to be made upon information gathered from carrier or shipper sources. How such information would be obtained is not entirely clear. We urge the committee to take into consideration the serious consequences which could flow from this portion of the bill which places reliance upon the antitrust laws. We believe that the potential for irreparable injury, together with the overriding necessity for protecting the public interest, strongly indicates the need for the availability of a special procedure that assures relief before, rather than after, injury has occurred."

While the Commission's functions do not qualify it to express an authoritative opinion on the applicability of the antitrust laws as such, the proposal to substitute those laws in place of minimum-rate regulation raises many problems in cases involving rate reductions on bulk and agricultural commodities. For example, the point has been made that a carrier fearing injury by a competitor's proposed rate reduction has the right under 15 U.S.C. 26 to sue for injunctive relief. For real protection such a plaintiff would need a temporary injunction pending decision on the merits, for which a bond would usually be required. Because of the large sums of money at stake in important adjustments, the size of the bond would be correspondingly large and might well be beyond the reach of smaller carriers. Otherwise, the remedy under the antitrust laws would be of questionable effectiveness. Beyond this burden—which could be overcome by a suit by the Government on behalf of the aggrieved carrier or carriers—lie other familiar problems such as primary jurisdiction and proof of the noncompensatory nature of the proposed reduced rate. It seems likely that in such a lawsuit some of these issues would tread so closely upon matters left to the jurisdiction of this Commission that the courts will desire to stay their hands until the Commission has expressed its views thereon. Moreover, cost finding in the field of rate regulation is not an issue with which courts are equipped to deal. In such cases some type of master would be necessary, and, if so, the logical master would appear to be the Interstate Commerce Commission. If that procedure became a reality, it would appear that very little would have been accomplished by the change in the basic responsibilities of the Commission and the courts.

Moreover, as a practical matter, there is the further question of just how the antitrust laws would operate to control rate wars between carriers. Conceivably, these struggles would continue until carriers involved were prostrated financially, resutling in bankruptcy proceedings and, possibly, Government ownership. And, finally, is the proviso to the proposed new paragraph (23) limited to the situation where a through route and joint rate is proposed between noncompetitive connecting carriers? Because of the nature of the railroad industry, through routes and joint rates have, from the earliest days, been made collectively. If the proviso contemplates that only noncompetitive carriers may deal with one another, it would appear to be impractical.

On the other hand, if its purpose is to allow competing carriers to act in concert, in establishing through routes and joint rates, and yet preserve to such carriers immunity from the antitrust laws, then it raises important questions of public policy. If the Commission is to be deprived of its minimum-rate power, what protection remains to the public in the event that monopolistic and predatory practices should occur?

We have, for the sake of brevity, restricted our comments on H.R. 4700 to those matters which, in our opinion, deserve emphasis or elaboration. As previously indicated, other consequences which we believe would follow the passage of H.R. 4700 were set forth in some detail by former Chairman Murphy at the committee hearings on H.R. 11583. Assuming this record is available to your committee, no purpose would be served by a repetitive discussion of those matters.

For the convenience of the committee, we have included in an attached appendix certain comments on H.R. 4700 which are of a more technical nature.

We trust that you will find the foregoing views helpful in your study and analysis of our transportation system. We stand ready to cooperate in the study of any other, or modified, approaches to achievement of equality of competitive opportunity. As indicated, we believe that the President's emphasis on this, as the basic objective to be achieved, is absolutely sound, and that

effectuation of this end is essential if our transportation system, and national economy and security, are to be guaranteed for the future.

Sincerely yours,

LAURENCE K. WALRATH, *Chairman.*

APPENDIX

1. Proposed new paragraph (23) omits certain commodities excepted under the provisions of section 203(b)(6), such as cocoa beans, coffee beans, tea, bananas or hemp, and wool imported from any foreign country. This means that proposed new paragraph (23), if enacted, would be in conflict with present section 203(b)(6). Under section 203(b)(6), these commodities are *not* exempt, while a literal reading of proposed new paragraph (23) would exempt them. The second proviso of proposed paragraph (23)(2) states that the words "agricultural commodities" shall *not* be deemed to include frozen fruits, frozen berries, frozen vegetables, etc., but cocoa beans, coffee beans, tea, etc., are omitted—thus indicating that the latter *are* included in the terms "agricultural commodities" and are therefore exempt. In other words, if proposed paragraph (23) is enacted into law, "cocoa beans, coffee beans, tea, bananas or hemp, and wool imported from any foreign country" will *not* be exempted under section 203(b)(6) of the act, but they *will* be exempted under new paragraph (23). We think this needs clarification.

2. Paragraph (b) of section 1 of the bill would amend section 5a of the act, which provides exemption from the antitrust laws, to exclude from the protection of that section cooperative rate agreements involving rates "for transportation of any commodity *referred to* in section 1(23) of this act, or of passengers." Section 1(23) "refers to" a number of commodities such as frozen fruits, frozen berries, frozen vegetables, etc., in specifically excluding them from the agricultural commodity exemption. As a result, the present wording of proposed section 1(23) could be interpreted as making parties to a rate agreement involving such *regulated* commodities subject to the antitrust laws. To prevent such an interpretation, it is urged that the language to be added to section 5a(9) be changed to read as follows: "except that such relief shall not extend to any party to an agreement with respect to any rate, charge, or fare for transportation of any commodity exempted by the provisions of section 1(23) of this Act from minimum rate regulation."

3. In addition, the proviso in the proposed new paragraph (23) appears to be in conflict with the proposed amendment to section 5 of the act. Thus, read literally, the language of the proposed amendment, to wit: "except that such relief [from the operation of the antitrust laws] shall not extend to any party to an agreement with respect to any rate, charge, or fare for transportation of any commodity referred to in section 1(23) of this Act, or of passengers.", would seem to withdraw the procedure for obtaining immunity apparently contemplated by the proviso in the proposed new paragraph (23). In this circumstance, it might be appropriate to insert after the word "agreement" and before the word "with" in the suggested amendatory language in 2 above, the parenthetical expression "(other than with respect to through routes as contemplated in the proviso to section 1(23))". If so revised, a further suggestion that the expression "any rate" in the proposed amendment to section 5a(9) should be corrected to read "any proposed reduced rate" becomes unnecessary.

While the change suggested in this paragraph might remove the apparent conflict, the intention of the proviso in the proposed paragraph (23) is not entirely clear to us.

4. Section 3 of the bill would amend section 418 of the act to allow freight forwarders to use common carriers engaged in transportation exempted under the provisions of proposed section 1(23). The exemption, contained in proposed new section 1(23), relates only to minimum rates, and thus would not affect motor-carrier transportation of agricultural commodities described in section 203(b)(6). Since proposed new section 1(23) exempts, as to minimum rates, the transportation of these commodities by all carriers, it is not clear whether this amendment of section 418 would allow freight forwarders to use exempt motor carriers for these commodities. We believe clarification is needed. In addition, the drafters of the bill apparently inadvertently overlooked the prior amendment to section 418 of the act in which reference was made to the Alaska Railroad and common carriers serving Alaska and Hawaii. The amendment should therefore, merely change the third from the last clause to read, "common carriers engaged in transportation exempted under the provisions of section 1(23) or 303(b) of this Act;".

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., April 29, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CHAIRMAN HARRIS: This is in response to your letter of March 16, 1963, requesting comments on a bill, H.R. 4701, introduced by you, "To provide for strengthening and improving the national transportation system and for other purposes." This matter has been considered by the Commission and I am authorized to submit the following comments in its behalf:

Except for certain changes hereafter noted, H.R. 4701 is substantially the same as H.R. 11584, introduced by you in the 87th Congress to implement various portions of the President's transportation message to Congress on April 5, 1962. The latter bill, as you are aware, was the subject of detailed testimony presented on behalf of the Commission by former Chairman Murphy during the hearings before your committee last year. In this circumstance, and to avoid overburdening the record, we shall confine our present comments to the more salient aspects of H.R. 4701. At this point, however, we believe it appropriate to observe that H.R. 4701, like its predecessor, H.R. 11584, includes a number of provisions which have been recommended for enactment by this Commission in the past and that, with the exceptions noted herein, we approve and support this bill.

For convenience of reference, the topic headings contained in the bill will be used to caption our discussion of the various sections therein.

EXPERIMENTS BY COMMON CARRIERS IN RATE, CLASSIFICATION, AND DOCUMENTATION SYSTEMS

In general, section 2 of H.R. 4701 would empower the Interstate Commerce Commission, as well as the Civil Aeronautics Board and the Federal Maritime Commission to authorize common carriers subject to their jurisdiction to experiment, under the agencies' supervision and control, with new service combinations or arrangements, simplified documentation, and simplified rate bases and freight classifications. These experiments could be proposed by the carriers, shippers, or the regulatory agencies and could involve individual carriers, carriers of the same mode, or of different modes. The participation of carriers and shippers would, however, be strictly on a voluntary basis. Where joint action by two or more regulatory agencies would be required, such action would be taken by the joint boards provided for in the Federal Aviation Act of 1958.

Unlike last year's bill, however, H.R. 4701 affirmatively indicates that the regulatory agencies would not be required to approve all proposed rates merely because they are labeled as experiments, but would be authorized to reject those which would have a seriously harmful effect upon shippers, the general public, or other carriers. This has been accomplished by the substitution of the permissive word "may" for "shall" in the first sentence of section 2(b).

In view of this substitution, the cause for concern previously expressed by this Commission has been removed. Accordingly, we endorse and recommend enactment of section 2.

RIGHT TO SHIP VEHICLES OR CONTAINERS ON CARRIERS OF OTHER MODES WITHOUT PRICE DISCRIMINATION

Under section 3 of the bill, common carriers subject to parts I, II, and III of the act would be prohibited from unjustly discriminating against any shipper or carrier, regulated or not, with respect to service or rates in transporting loaded or empty vehicles or shipping containers. The announced purpose of this section is to provide the so-called carrier shipper, as in piggyback operation, with the same competitive opportunities as noncarrier shippers.

We agree with the basic objective of section 3. In fact, the Commission has long favored, and has itself sought to encourage, greater coordination of the transportation facilities of the various modes to the end that the inherent advantages of each may be utilized in the most efficient manner. In this connection, we have recommended in our current annual report to the Congress certain amendments to the act which would permit us in proper cases, after a hearing, to require the establishment of through routes and joint rates between motor common carriers of property and between those carriers and common carriers by rail, express, and water. Bills to give effect to this recommendation were recently introduced as H.R. 2088 and S. 676 in the House and Senate, respectively.

In addition, and of particular importance here, has been the institution by the Commission of a formal investigation covering all aspects of piggyback service. Ex parte 230, Substituted Service—Charges and Practices of For-Hire Carriers and Freight Forwarders (piggyback service). Using this proceeding as a vehicle, we intend to review thoroughly and to evaluate and resolve (or, where necessary, formulate appropriate legislative recommendations concerning) the issues presented by the rapid acceleration in the growth of coordinated motor-rail activities under the various piggyback plans.

At a prehearing conference held on October 9, 1962, proposed rules applicable to the various trailer-on-flatcar services were formulated by the Commission and released to the parties. Since that time, numerous interested shippers, railroads, motor and water carriers, and other interested persons have submitted detailed and highly informative written representations concerning all aspects of the proposed rules. The last of these pleadings was filed in early April of this year, and every effort is being made to reach a prompt decision on all of the issues presented.

In these circumstances, and pending the determination of the investigation proceeding in Ex parte 230, we lack sufficient information upon which to take an informed position on section 3 of the instant bill, the ramifications of which are far-reaching and could drastically affect basic and long-established relationships between carriers.

We respectfully suggest, however, that the Congress in the meantime, may wish to encourage greater coordination of services by enacting legislation as set forth in S. 676 and H.R. 2088.

ESTABLISHMENT OF THROUGH SERVICE AND JOINT RATES; JOINT BOARDS

Section 4(a) of H.R. 4701 contains a declaration of policy that, in the national interest, the establishment of through service and joint rates, fares, and charges between carriers of all modes should be encouraged and promoted. The Commission strongly favors and recommends enactment of this policy declaration. We suggest, however, that as between carriers subject to the jurisdiction of the Commission this policy would be implemented expeditiously and effectively by enactment of H.R. 2088 and S. 676.

Section 1003 of the Federal Aviation Act of 1958 which section 4(b) of the bill would amend, authorizes air carriers to establish through service and joint rates with other common carriers. Section 1003 further provides that matters relating to through service and joint rates between air carriers and common carriers subject to the Interstate Commerce Act may be referred by the Interstate Commerce Commission or the Civil Aeronautics Board, either upon complaint or upon its own initiative, to a joint board composed of a like number of members of the Commission and Board, as appointed from time to time by their respective chairmen.

Subsection (b) of the proposed revision would, among other things, expand the membership of the joint board under section 1003 to include members of the Federal Maritime Board. As thus composed, the joint board would, under proposed subsection (e), be authorized to pass upon such matters relating to through service and joint rates as may be referred to it by any of the participating agencies, upon its own initiative, or upon complaint filed with the agency by an affected shipper, consignee, or carrier. Participating carriers would also be authorized to file complaints respecting the lawfulness of the divisions of such joint rates.

In considering section 4(b) of the bill it should be kept in mind that, with two possible exceptions, statutory authority already exists for the establishment of through routes and joint rates with respect to combinations of rail, motor, and water services subject to the jurisdiction of the Interstate Commerce Commission; air service subject to the jurisdiction of the Civil Aeronautics Board; and water service subject to regulation by the Federal Maritime Commission. The only through-route and joint-rate combinations apparently not now authorized are those which would be applicable (1) to domestic offshore water traffic moving between the U.S. mainland and its insular possessions (e.g., Puerto Rico, Guam, Wake, and Virgin Islands), and (2) to traffic moving by water between the United States and foreign countries.

The Commission believes that the important changes in the administration and functions of joint boards contemplated by section 4(b) should be carefully studied and clarified before receiving favorable consideration by the Congress. To this end, and acting in accordance with the request of the President in his

transportation message to Congress on April 5, 1962, the Chairmen of this Commission, the Civil Aeronautics Board, and the Federal Maritime Commission have been endeavoring to seek a coordinated and mutually satisfactory solution which will facilitate and improve the operations of interagency joint boards. It is expected that our current active consideration will lead to recommendations on this matter in the very near future.

In this circumstance, it is suggested that action on section 4(b) be held in abeyance until the results of this joint effort are obtained.

ENFORCEMENT AGREEMENTS WITH STATES ON HIGHWAY TRANSPORTATION

Under section 205(f) of the act, the Commission, among other things, is authorized to avail itself of the cooperation, services, records, and facilities of State authorities in the enforcement or administration of the provisions of part II. Section 5 of the instant bill would amend section 205(f) so as to specifically authorize the Commission to reciprocate by entering into cooperative agreements with the States to enforce State and Federal economic and safety laws and regulations concerning highway transportation.

We strongly favor cooperation with State authorities in any manner which may improve the effectiveness of compliance and enforcement activities in the vital area of highway safety. In addition, the Commission believes that enactment of this proposal will be of substantial assistance in curbing unlawful operations, especially if our recommendation limiting the agricultural commodity exemption to vehicles having three axles or less, as set forth in H.R. 5201 and S. 925, is adopted. Since section 5 would remove any doubt concerning the general authority of the Commission to act cooperatively with the States in these areas, we support and recommend enactment of this legislation.

At the same time, we observe that section 5 is silent as to matters which may be made the subject of a cooperative enforcement agreement. Consequently, we are not certain of the extent to which the proposed legislation contemplates more, if indeed it does, than an exchange of information. In this respect, we respectfully suggest that some clarification is desirable.

In addition, it is noted that section 222(d) of the Interstate Commerce Act prohibits the disclosure by any special agent, examiner, or accountant of any information coming to his knowledge during the course of any examination or inspection of a motor carrier's property, equipment, or records, except as he may be directed by the Commission or by a court or judge. We are not certain that this section empowers the Commission to grant blanket authority in advance for a disclosure by its personnel to State officials of information concerning State violations which has come to their attention during the course of an official examination or inspection.

In view of our doubts in this respect, we also recommend that section 5 of H.R. 4701 be amended so as to give the Commission clear authority to allow such disclosures under appropriate safeguards in cooperative agreements.

EXTENSION OF CIVIL FORFEITURE PENALTIES OF INTERSTATE COMMERCE ACT TO VIOLATIONS INVOLVING LACK OF OPERATING AUTHORITY, INCREASE IN PENALTIES

Section 6 of H.R. 4701 would amend section 222(h) of the Interstate Commerce Act so as to extend the civil forfeiture provisions therein to unlawful operations by motor carriers and to violations of the Commission's motor carrier safety regulations. It would also increase substantially the amount of forfeitures prescribed. Legislation along these lines has been recommended by the Commission on a number of occasions and testimony in support thereof presented in hearings before committees of the House and Senate. This proposed amendment is consistent with legislative recommendation No. 12 in the Commission's 76th annual report, which has been implemented by the introduction of H.R. 2094 and S. 682 in the House and Senate, respectively.

Under existing law, procedures for dealing with certain motor carrier violations are often slow and cumbersome, and frequently ineffective. Criminal prosecutions, for example, must be brought in the district in which the violations occur. Thus, in the case of multiple violations by a carrier with extensive territorial operations it may be necessary to institute separate actions in several district courts if all of the violations are to be covered. Civil forfeiture proceedings, on the other hand, may be instituted in the district in which the carrier maintains its principal office, where it is authorized to operate, or where it can be found. Moreover, less time is needed for investigating violations because of the difference in quantum of proof required in such proceedings.

Under the proposed amendment, a civil forfeiture action could be brought against a for-hire motor carrier for transporting property without a required certificate or permit. Such action would be available whether or not the carrier had taken steps to give the operation an appearance of legality, but the principal enforcement advantage that would accrue would be when the operator, by means of an alleged vehicle lease or an alleged purchase of the commodity hauled, is attempting to give the operation an appearance of private carriage.

There are a number of vehicle arrangements in which the facts demonstrating their illegality are readily ascertainable. This is also true of unlawful operations under the guise of legitimate private carriage such as so-called buy-and-sell operations. However, considerable difficulty is often encountered in establishing the subjective elements of knowledge and willfulness required to obtain a criminal conviction. In addition, in a criminal proceeding there can be no appeal from an acquittal. Although under the proposed civil forfeiture provisions, violations, of course, would still have to be established by a preponderance of the evidence, we believe that the proposed amendments would assist materially in our enforcement effort. Actually, such cases are now handled in the civil courts, but an injunction against such operation in the future is the most that can be secured. The possibility of a civil injunction action, where there is no pecuniary penalty or criminal stigma involved, has very little effect as a deterrent to would-be violators. A civil forfeiture action, carrying with it substantial monetary penalties should, on the other hand, have a strong deterrent effect against questionable leasing arrangements.

Enactment of the proposed legislation would also greatly facilitate the Commission's enforcement activities in the important area of motor carrier safety. In view of the threat posed by the unsafe operator to the public safety on the highways, there are few areas in which the need for efficient and effective means of enforcement are more pronounced. Although a very high percentage of cases involving violations of the Commission's safety regulations are disposed of by pleas of guilty or nolo contendere, investigations looking toward such prosecutions are nevertheless extremely time consuming because of the necessity of proving every element of the alleged criminal offense. Effective regulation of the safety of operation of the vast number of carriers subject to our jurisdiction demands that maximum utilization be made of the segment of our field force that is devoted to this activity. Since the quantum of proof required in a civil forfeiture proceeding is not as great as that required in a criminal action, a substantial amount of the time that must now be spent in preparing for criminal prosecutions in such cases could be devoted to handling a larger number of cases under the recommended forfeiture procedure.

For the foregoing reasons, we strongly support and urge enactment of section 6.

At the same time, and in accordance with an additional recommendation contained in our legislative recommendation No. 12, we suggest that the Commission's effort to achieve more effective and expeditious enforcement would also be greatly enhanced if it were authorized to institute forfeiture proceedings directly in the courts instead of proceeding through the Department of Justice as it is now required to do. Since a civil rather than a criminal proceeding is involved, participation by the Justice Department would not seem to be essential. This proposed change in the statute could be accomplished by substituting the words "by the Commission or its duly authorized agent," for the words "in the name of the United States," in the second sentence of section 222(h), and by striking the fourth and fifth sentences of the subsection.

CIVIL LIABILITY FOR VIOLATIONS OF FEDERAL AVIATION ACT BY AIR CARRIERS

Sections 7 and 8 of H.R. 4701 would amend the Federal Aviation Act so as to make air carriers liable for the payment of damages in reparation awards to persons injured by them through violation of that act. Since enactment of this portion of the bill would not affect the jurisdiction or functions of the Commission, we shall not undertake to comment thereon.

We wish to point out, however, that our current legislative recommendation No. 8 (as implemented by H.R. 2594 and S. 678) seeks to accomplish the same equity with respect to shippers injured through violations of the Interstate Commerce Act by motor common carriers and freight forwarders. The President, in his transportation message of April 5, 1962, and again in his supplemental message on the occasion of the introduction of the instant bill, has recommended enactment of legislation which will accomplish this result. We, of course,

strongly concur in his recommendation, and urge enactment of H.R. 2594 or S. 678.

SIMPLIFICATION OF GOVERNMENT TRANSPORTATION RATES AND PROCUREMENT; TRANSPORTATION OF MAIL BY MOTOR COMMON CARRIERS

Section 9(a)(1) of the bill would amend the second proviso in section 321(a) of the Transportation Act of 1940, which excepts from the competitive bidding requirements of section 5 of title 41, U.S. Code, transportation services procured for the Government from any common carrier lawfully operating in the territory where the services are to be performed. It is our understanding that the Comptroller General has construed this exception as being inapplicable to the transportation of mail.

Under the proposed revision, the head of any agency, or his designee, would be authorized, without advertising for bids, to negotiate contracts for the procurement of "transportation, including mail transportation services performed by common carriers by motor vehicle when the services required can be procured from any common carrier lawfully operating in the territory where such services are to be performed, and services accessorial thereto for the United States * * *." The proposed revision would thus appear to make it clear that mail transportation services may be procured from motor common carriers without the necessity of advertising for bids.

Transportation of mail for the United States by motor vehicle is not subject to regulation by the Commission either with respect to authority to perform such service or as to the compensation to be paid. We are not, therefore, familiar with the problems which may confront the Post Office Department in this area and we take no position with respect to this limited aspect of the proposal. However, it also appears from the language employed that contracts for transportation services, other than for the transportation of mail, could be negotiated, without competitive bidding, with any carrier, whether a common carrier or not.

It is our understanding that the present exception from competitive bidding applies only to procuring the services of common carriers, and in this connection it should be noted that sections 1(7) and 22 of part I of the Interstate Commerce Act, and the comparable provisions in part II, III, and IV, which authorize transportation free or at reduced rates for the Government, apply only to common carriers. Since it is not clear whether the extension of this exception to other than common carriers was intended, we deem it advisable to call this to the committee's attention.

Paragraph (2) of section 9(a) of the bill would, in effect, repeal present subsection (b) of section 321 of the 1940 act by substituting entirely new provisions. The present subsection relates to rates to be charged by so-called land-grant railroads when performing transportation services for the Government. Since land-grant rates, if presently applicable at all, are no longer an important factor in the performance of transportation services for the Government, we see no objection to the elimination of the present language.

The proposed new language would authorize the Administrator of General Services and the Secretary of Defense, or their designees, on behalf of the civil and military agencies, respectively, to negotiate, contract for, or "otherwise establish," for periods not exceeding one year but renewable for successive one-year periods, simplified rate structures for transportation services and accessorial services procured for the United States.

As a condition precedent to the establishment of any such rate structure, the Administrator and the Secretary would have to determine that the prospective structure was in the "public and Government interest" and might reasonably be expected to produce "lower or not substantially higher" administrative and transportation costs than are normally applicable to the United States. A further prerequisite would be the conduct of research and experimentation for the purpose of devising practical systems to make rate publication and ascertainment less costly and more convenient. One of the purposes appears to be the development of a system that would be well suited to condensed tabulation or the application of automatic data processing. Finally, the new subsection would require the regulatory bodies to "observe, recognize, and employ to the maximum beneficial extent the techniques and results of said research and experimentation." Industrial, academic, and other government agencies would merely be authorized to do so.

Another purpose of section 9(a)(2) appears to be the development of a new method of determining transportation charges which would replace the present

rate structures of the carriers on Government traffic, including section 22 charges. A further purpose seems to be the creation of a rate structure, separate and apart from the existing commercial tariff system, which would be susceptible to automatic data processing procedures. While the use of automatic data processing is usually desirable, we do not feel that the maintenance of just and reasonable rates for the carriers should be subordinated to machine data-processing considerations.

We agree with the overall objectives of the proposal insofar as it seeks a simplification of rate structures, for it would merely incorporate into law the existing right of the Government, or any shipper, to urge such action upon the regulated carriers. There is some danger, however, that the main thrust of this proposal aims at a reduction in administrative and transportation costs to the Government at the expense of a flexible rate structure and, possibly, even at the expense of the carriers since there is no requirement that they realize a corresponding reduction in their costs. We would, therefore, be opposed to the creation of a special rate structure for Government traffic which would be lower than that for commercial traffic unless it can be shown that there would be a corresponding reduction in the cost of performing the service.

The Commission has for many years been of the view that, except during time of war or national emergency, the Government should pay full tariff rates and charges for transportation services performed on its behalf, the same as any other shipper or user of common-carrier services. A large percentage of the traffic transported for the Government now moves at reduced rates under section 22 which are not available to the commercial shipper. This preferential treatment has a strong tendency to increase the cost of regulated transportation services to commercial users who, when their rates become too high, resort to private carriage. Such diversion of traffic to private carriage is obviously detrimental to the maintenance of a sound common carrier system. Moreover, the preferential treatment accorded the various levels of Government is, in our view, inconsistent with the national transportation policy which has among its objectives "to foster sound economic conditions in transportation" and "to encourage the establishment and maintenance of reasonable charges for transportation services without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices."

Accordingly, rather than broaden the authority of the Government to secure transportation services at less than existing commercial rates, as proposed in section 9(a)(2), we favor complete elimination of such authority except during time of war or national emergency. Enactment of legislation to this effect was recommended to the Congress in the Commission's annual reports for 1955 and 1956, and more recently in a report to the Senate Commerce Committee, dated December 12, 1961, commenting on S. 1145, "To amend section 22 of the Interstate Commerce Act."

In addition to the contemplated creation of a special rate structure for Government traffic, there are a number of other features of section 9(a)(2) which, in our opinion, are open to serious question. These were pointed out with particularity by former Chairman Murphy in testimony before your committee last year. (See pp. 139–140, printed report of hearings on H.R. 11583 and H.R. 11584.) We adhere to, but in the interest of brevity will not repeat here, the views set forth in his testimony on these vital points.

For the foregoing reasons, we again recommend against enactment of section 9(a)(2) of the bill.

Subsection (b) of section 9 would retain the status quo insofar as the provisions of section 2631 of title 10 of the United States Code are concerned. That section relates to charges made by vessels of the United States for transporting supplies purchased for the armed services. Since these provisions are not administered by the Commission, we do not feel that we are in a position to offer any helpful comments as to the merits of this subsection.

TRANSFER OF POWERS VESTED IN INTERSTATE COMMERCE COMMISSION WITH RESPECT TO GUARANTEE OF LOANS TO COMMON CARRIERS BY RAILROAD

Sections 10, 11, and 12 of the proposed measure would accomplish a transfer of the Commission's railroad loan guarantee functions under part V of the act to the Department of Commerce.

We recognize that there are cogent reasons both for and against the effectuation of this proposed transfer. We emphasize, however, that the Commission, by reason of its role as an independent regulatory agency, requires and continuously receives detailed operating and economic data from the railroads and, thereby, is

in a peculiarly advantageous position to evaluate efficiently and expeditiously, and at minimum cost, the current financial condition and needs of individual railroads. We feel that our administration of part V has been efficient and in the public interest.

In these circumstances, we believe that the question as to whether part V should be repealed and our functions thereunder transferred to the Department of Commerce, or other executive agency, is a matter which should be reserved for determination by the Congress on the basis of broad policy considerations. This, of course, assumes that the present statutory expiration date of part V is to be extended beyond June 30, 1963.

We suggest that if sections 10, 11, and 12 are favorably considered, certain modifications are necessary in order to eliminate ambiguities and voids appearing in subsections (f), (g)(1), and (j) of section 10 as presently worded. For convenience, these suggested modifications are set forth in an appendix attached hereto.

Finally, and with reference to the bill as a whole, we observe that in the absence of a specified expiration date, its provisions would take effect on the date of enactment. This, we feel, would create a number of problems. For example, if section 3 is enacted, it is possible that some of the tariffs of the affected carriers which are in effect on the date of enactment would not be in full compliance with the provisions of the section. These carriers would need at least 45 to 60 days within which to bring their tariffs in line with the new requirements. Furthermore, with respect to section 4, if enacted, sufficient time, not less than 180 days, should be allowed to establish any necessary regulations such as the form and manner of publishing and filing tariffs pursuant thereto. Finally, in connection with section 12(a) concerning the transfer to the Department of certain Commission personnel and property, the Bureau of the Budget would need some time within which to determnie which employees and what property should be transferred. We recommend, therefore, if these provisions are favorably considered, that the bill be amended so as to provide that the aforementioned sections shall not become effective until the expiration of 180 days after enactment.

Except as otherwise noted, we recommend enactment of H.R. 4701.

We trust that you will find the views expressed in this letter helpful in your study and analysis of our transportation system.

Sincerely yours,

LAURENCE K. WALRATH, *Chairman.*

APPENDIX. SUGGESTED MODIFICATION OF SECTION 10 OF H.R. 4701

Section 505 of the Interstate Commerce Act provides, in effect, that the Commission may consent to the modification of the provisions of any guarantee into which it had entered if it determines that it should be equitable to do so. Subsection (f) of section 10 of the bill would grant similar authority to the Secretary of Commerce with respect to any guarantee into which *he* had entered. No such authority would be granted to the Secretary, however, with respect to guarantees entered into by the Commission. Only by implication could it be said that section 11(a) would remedy this defect.

Section 506(a) of part V provides that payments required to be made as a consequence of any guarantee by the Commission shall be made by the Secretary of the Treasury. Under subsection (g)(1), the Secretary of the Treasury would be authorized to make whatever payments that may become necessary as a consequence of any guarantee made by the *Secretary of Commerce*, but no provision is made for payments occasioned by guarantees which had been made by the *Commission* under part V, which the bill would repeal. Finally, under subsection (j) the authority granted to the Secretary under section 10 would expire on June 30, 1963, except as to pending applications and as to guarantees already made by the *Secretary*. Although some of the obligations guaranteed by the Commission will not mature until 1975 or 1976, subsection (j) even though part V would be repealed, contains no comparable provision respecting guarantees which have been made by the Commission.

In order to avoid any doubt as to the status of obligations heretofore guaranteed by the Commission under part V, we recommend that the provisions of subsections (f), (g)(1), and (j) be amended to embrace such obligations. In this connection section 10 should also be amended to specifically provide that the Secretary shall be responsible for the continued administration of loans guaranteed by the Commission.

Two other problems would be raised by enactment of section 10 as presently worded. Subsection (d) would empower the Secretary to make guarantees "after consultation with and consideration of the views and recommendations of the Commission." This provision is indefinite in that it does not set up any standards or guiding principles to be followed by the Commission in expressing its "views and recommendations" to the Secretary. Good administration would seem to require that the Commission's duties and responsibilities in this connection be set forth in some detail. Comparable duties and responsibilities of the Commission were described in detail in the Transportation Act of 1920 and the Reconstruction Finance Corporation Act.

A very serious question is raised by the fact that section 10 does not indicate whether the issuance of railroad securities guaranteed by the Secretary would have to be authorized by the Commission under section 20a of the Interstate Commerce Act. Any such securities now issued without such authorization are void. It is of utmost importance, therefore, that it be made clear whether the issuance of securities of a railroad guaranteed by the Secretary would have to be authorized by the Commission under section 20a.

Section 11 of H.R. 4701 deals with various matters incidental to the proposed transfer of loan guarantee authority. Subsection (a) provides that all orders, approvals, permissions, agreements, and regulations, among other things, issued, made, granted, or allowed by the Commission under part V and in effect at the time the Commission's functions thereunder are vested in the Secretary shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary, by a court, or by operation of law. At present there is no provision in part V authorizing the Commission unilaterally to terminate or set aside the loan guarantee agreements into which it has entered. Section 11(a) would, however, by its terms, appear to authorize the Secretary to terminate or set aside any guarantee agreement which has been approved and entered into by the Commission under part V. It would seem obvious that this is not the intent of the bill and we therefore recommend, if the provisions of section 11(a) are favorably considered, that they be clarified in this respect.

Section 11(b) provides that the provisions of section 11 of the bill shall not affect any "proceedings pending" before the Commission at the time such section takes effect; but any such proceedings shall be continued before the Secretary of Commerce, orders issued therein and payments made pursuant to such orders, as if section 10 had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Secretary of Commerce or by operation of law. The meaning of this section is not entirely clear. Perhaps, it is intended that "proceedings pending" embrace all cases in which guarantees have been made, but this would, in our opinion, require an unnatural construction. We consider that a proceeding is closed (although, of course, subject to reopening) when a guarantee has been approved and a guarantee agreement has been executed and delivered. The language of this section should be revised so as to eliminate the ambiguity.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., April 15, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is had to your letter inviting the comments of the Department of Justice on H.R. 4700, a bill to exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes.

We note that with one exception H.R. 4700 is identical to H.R. 11583, submitted to your committee in the 87th Congress. H.R. 4700 contains provisions, not in H.R. 11583, expressly retaining in the various regulatory agencies existing authority to determine that rates, fares, or charges are in violation of applicable statutory provisions against unjust discrimination or undue or unreasonable preference.

The Department of Justice favors enactment of H.R. 4700. Our views on this proposed legislation continue to be those expressed by Assistant Attorney General Loevinger in his prepared testimony before you regarding H.R. 11583, on June 29, 1962. The additional provisions concerning the power of the regula-

tory agencies to prohibit unjust discriminations and preferences articulate a feature we consider to be implicit in the former measure, and thus effect no change in our position.

Sincerely,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., May 8, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H.R. 4701) "to provide for strengthening and improving the national transportation system and for other purposes."

H.R. 4701, which would be cited as the Transportation Act of 1963, is designed to implement that part of the President's transportation message of April 5, 1962, which relates to experiments by common carriers in rate, classification, and documentation systems; establishment of thorough service and joint rates, fares, and charges; enforcement agreements with the States on highway transportation; and extension of civil forfeiture penalties of the Interstate Commerce Act to violations involving lack of operating authority.

The Department of Justice believes that the portion of the bill dealing with experiments by common carriers in rate, classification, and documentation systems, and in new service combinations, is one of the most important means by which the President's objective of "greater reliance on the forces of competition and less reliance on the restraints of regulation" may be reached. The nature of the experiments authorized and the manner of their operation and supervision may largely be determinative of the patterns which transportation service and regulation assume in the future. This is true not only as to rates, classification, and documentation systems, but also as to the more significant factors of service combinations and arrangements.

The language of the bill allows the widest possible scope for combinations and agreements among carriers. It is to be anticipated that a multitude of proposals will be pressed upon the regulatory agencies concerned, and among them may be trade-restraining combinations and arrangements of primary benefit to the carriers, as well as proposals which could lead to innovations directly benefiting the public and tending toward transportation services closely adjusted to the free play of market forces. We regard it important to furnish a guideline to the agencies for their use in selecting and supervising experiments. It is, therefore, recommended that subsections (c), (d) and (e) of section 2 of the bill be redesignated as subsections (d), (e), and (f), respectively, and a new subsection (c) be inserted reading as follows:

"(c) In encouraging, authorizing, and supervising experiments under this act, the regulatory agencies shall promote combinations, arrangements, and plans consistent with the goal of fostering and relying upon competition to the maximum extent practicable, and of reducing regulatory supervision of transportation where possible."

The suggested amendment is a restatement of the objective which the President indicated that this proposal, along with others, was intended to achieve. It would channel the energies of private parties toward achieving transportation service at low cost, "* * * operating under * * * the checks of competition to the maximum extent practicable," and channel the energies of regulatory agencies toward "providing a consistent and comprehensive framework of equal competitive opportunity" under diminished regulation.

The inclusion of this provision will forcefully enunciate the President's policy underlying this legislation, and will serve to guide the efforts of private parties and regulatory bodies toward ventures most likely to implement that policy.

With respect to the other provisions of the bill the Department of Justice defers to the views of the Department of Commerce.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

OFFICE OF THE POSTMASTER GENERAL,
Washington, D.C., April 29, 1963.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for a report on H.R. 4701, a bill "to provide for strengthening and improving the national transportation system and for other purposes."

The Post Office Department urges enactment of this legislation.

We are particularly interested in section 9(a) (1) of the bill which would permit this Department to enter into contracts with reliable motor common carriers to transport mail, without the requirement to advertise for bids. This would allow the Government to obtain mail transportation service from motor common carriers in the same manner and to the same extent as it obtains transportation for persons or property.

We have been advised by the Bureau of the Budget that from the standpoint of the administration's program, there is no objection to the submission of this report to the committee.

Sincerely yours,

J. EDWARD DAY,
Postmaster General.

The CHAIRMAN. In submitting these two bills to the President, the Secretary of Commerce stated that the purpose of the bills was that of carrying out certain recommendations contained in the message of the President to the 87th Congress on April 5, 1962, concerning the transportation system of our country.

H.R. 4700 proposes to exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and intercity passengers. With one exception, it is the same as H.R. 11583 of the 87th Congress.

H.R. 4701 covers a number of miscellaneous amendments to existing transportation statutes, some procedural and some substantive, and provides for the transfer to the Department of Commerce of authority relating to governmental guarantee of loans to railroads, and for the creation of a new joint board, in which the Federal Maritime Commission would participate, to handle through-route and joint-rate matters. H.R. 4701 is substantially the same as H.R. 11584 of the 87th Congress.

It might be called that both of these bills referred to, H.R. 11583 and H.R. 11584, were the subject of hearings last year beginning June 26 and continuing until the closing days of the last Congress. Due to the breadth of the subject matter involved and the tremendous interest in the legislation, all persons who desired to be heard on the subject could not be accommodated and we were not able to conclude the hearings.

It is my hope that in view of the extensive hearings of last year we may proceed expeditiously in the conduct of the hearings on these reintroduced bills and this time reach all those who may wish to be heard on the proposed legislation. Indeed, in order that all may have had an opportunity to express their views, we are commencing our hearings today by first taking up those segments of the transportation industry whose representatives were not heard last year. We expect to continue the hearings by reversing the order of our witnesses with the expectation of concluding with those representing government agencies.

I would like to take just a moment to express the hope that in the course of the testimony, the witnesses will give special attention to

clarifying certain matters on which I think the record of the hearings last year was somewhat ambiguous. Since the bill H.R. 4700 proposes to exempt from the minimum rate regulation by the Interstate Commerce Commission what is said to be some 60 to 70 percent of the railroad traffic involved, it seems to me to be important to develop several points.

(1) Just exactly what commodities are we talking about? Certainly not every kind of bulk commodity would seem to be of a character that lends itself to the transportation being performed by competing modes.

(2) Just exactly what statutes would apply, if the minimum rate provisions of the Interstate Commerce Act do not, for the protection of the shippers and general public, or of carriers; just which antitrust laws and what portions of these laws, would be applicable?

(3) What would be the effect upon the other 30 or more percent of the traffic referred to? Is it desirable to have part regulated and part not, or to have all free of minimum rate regulation?

(4) The elimination of discrimination between communities and sections of the country.

On this last subject I am sure that during the course of the hearings last year I gave adequate notice that I expected a thorough discussion of these discriminations. I am certain that I indicated my belief that if the railroads can justify a rate between two river points as being compensatory it was just as logical that a similar rate should be applicable in the general area whether or not both communities were on the river.

I might mention that in this connection I recall the testimony of Mr. D. W. Brosnan, president of the Southern Railway who stated that his company "is determined to give every inland town the rate advantages now enjoyed by waterway ports," and by that of Mr. Jervis B. Langdon, president of the Baltimore & Ohio Railroad, who stated that his railroad had exactly the same policy. I think I will be interested in the course of these hearings to ascertain how farreaching has become the adoption of this policy, and how much it is being put into practice.

There is another thing I have been quite interested in and some of the Members I think would be interested in, and that is the effect of the procedure of the so-called motor freight bureaus. Just what is their authority, if any, under what procedure are they determining these rates, and what effect they have on the entire ratemaking procedure.

I believe that it would be helpful if we had an understanding how most of the rates are arrived at that are filed with the ICC. I know it gets into a pretty far-reaching and technical subject, but in my judgment the people of the country ought to know how their rates are actually determined. I would like to know that myself.

This would seem even more significant in the hearings on H.R. 4700 this year than the bill last year because the difference between the two bills is an addition to the bill this year which reinforces ICC control over discriminations, but qualifies such discriminations with the adjective "undue." It is evident that the presence of "undue" in the language has led in the past to the preservations of these rate discriminations against certain areas.

All of these we hope to develop and I trust those who are to testify will understand that we expect you to give your testimony as you would like, as you feel, and expressing your own views, opinions, and suggestions for the members of the committee. I think it would be appropriate for us to raise items with you from time to time.

It is going to take a while to develop this highly important and technical problem, but we want to do it and make a good record and base whatever action the committee may take in this regard on it. Certainly, we welcome your advice. Our first witness this morning will be Mr. W. A. Bresnahan, assistant managing director of the American Trucking Associations, with address here in Washington.

STATEMENT OF WILLIAM A. BRESNAHAN, ASSISTANT MANAGING DIRECTOR, AMERICAN TRUCKING ASSOCIATIONS, INC., WASHINGTON, D.C.

Mr. BRESNAHAN. Thank you, Mr. Chairman.

The CHAIRMAN. You may identify yourself further, if necessary, for the record and proceed, Mr. Bresnahan.

Mr. BRESNAHAN. My name is William A. Bresnahan, and I am assistant managing director of American Trucking Associations, Inc., with headquarters at 1616 P Street NW., Washington, D.C.

Our organization is a federation made up of 51 affiliated State associations and 12 national conferences, and represents the entire range of truck operations, for-hire and private, large and small, long-haul and local, general freight carriers and highly specialized carriers.

I am the first of several witnesses who will set forth the position of the trucking industry on the extremely important issues which your committee has been called upon to resolve. We have attempted to coordinate our testimony in a way that will evolve as a single presentation with a minimum of repetition.

You have before you two bills which together embrace most of the suggestions contained in last year's transportation message from the White House.

H.R. 4700, known generally as the minimum rate bill, would repeal the Interstate Commerce Commission's longstanding power and duty to require the maintenance of reasonable minimum rates for the transportation of bulk commodities and agricultural and fishery products.

H.R. 4701, frequently called the omnibus bill, embraces a variety of other proposals, not necessarily related, and each of which must be considered separately and upon its own merits.

We have a keen interest, pro or con, in some of the proposals contained in the omnibus bill, and a later witness will devote his entire testimony to these issues.

However, my statement and the bulk of our coordinated presentation will be directed to H.R. 4700, the minimum rate bill, and the issue of such overriding importance which it involves.

Our presentation will be in opposition to H.R. 4700 or any proposal that would deprive the Commission of its power and duty to prevent minimum rates from becoming unreasonably low.

It might be helpful if, at the outset, I outline the major points which our witnesses will make and seek to develop.

1. Transportation, like every other business, has some problems, but there is no "crisis in transportation," and to the extent that problems

actually exist they would be aggravated and not solved by repeal of the minimum rate power.

2. Removal of minimum rate controls would be the signal for wfidespread and ruinous rate wars. No longer required to be "reasonable," rates would become "unreasonable." Operating cost and value of service could be and would be ignored. The ratemaker would be concerned with only one question: How low must my rate be to grab the business?

3. There are instances today of discrimination, preference, and prejudice, even with the minimum rate power. If that power is removed, we are inviting discrimination, preference, and prejudice to become rampant. This is why the shipper community is so divided on the question, divided between shippers who would be the victims and those who are big enough or so situated that they hope to be the beneficiaries.

4. It is true that the provisions dealing with discrimination, preference, and prejudice would be left in the law, and, therefore, the Commission would be presumed to retain responsibility in these areas of regulation. It would be responsibility without commensurate authority.

As the Commission itself has testified, it relies heavily on the minimum rate power to prevent discrimination, preference, and prejudice. The Commission Chairman cited chapter and verse, including the famous southern Governors' case involving railroad rate discrimination against the South and West.

5. The congressional admonition against destructive competition, written into the national transportation policy, would remain in black and white, but repeal of the minimum rate power not only would make it impossible for the Commission to carry out that mandate. Such repeal would constitute an engraved invitation to engage in destructive competition. The Commission has testified flatly that destructive rate wars would result.

6. Another basic principle of the national transportation policy is the preservation of the inherent advantages of the different forms of transport. The Commission would be hard pressed to even determine which carrier had the inherent advantage if it lacked the power to suspend and investigate a suspect rate to discover whether it reflected a true inherent advantage or actually was a below-cost rate designed to destroy a competitor which really possessed the inherent advantage.

7. If there is any need for change in the law, the need is for tightening of the statute and its administration to clean up the discrimination and destructive competition that already has been allowed to creep into the rate structure. Passage of H.R. 4700 would be an unintended but nonetheless tragic endorsement of these evils.

8. Business generally operates under a comprehensive set of antitrust laws. Because of its public utility nature of its special complex problems, transportation is regulated under a special law administered by a special agency which cannot function as an effective substitute for antitrust controls if the minimum rate power is removed. While we favor the present regulatory system and are opposed in any case to removal of the key power essential to that regulatory system, we believe that if the minimum rate power is removed, then the transportation to be so deregulated should be made subject to all of the antitrust laws which are applicable to business generally.

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H.R. 4700 is seriously deficient in this respect, because it would not apply the Robinson-Patman Act or important provisions of the Clayton Act. The bill also fails to establish with any certainty that carriers threatened by injury would have the same right to seek injunctive relief that is available under the antitrust laws to general business.

9. Even under full application of all the antitrust laws, widespread damage could occur before such laws could prevent it or correct it. This has been recognized as a glaring weakness in the antitrust laws, and the administration has recommended that Congress enact a bill which would empower the Federal Trade Commission to issue cease and desist orders for the purpose of preventing damage before it occurs.

10. Since railroad rates on bulk and agricultural commodities already are the most depressed rates in the railroad rate structure, frequently yielding less than out-of-pocket cost, simple logic defies advertised savings of billions of dollars through further cuts in such rates. Any savings growing out of below-cost rate wars are illusional as well as temporary, since they inevitably have to be recouped by increasing the rates on noncompetitive traffic, and subsequently, on the cutthroat traffic after the competition has been destroyed.

11. There is no basis in fact for any impression that the Commission is either arbitrary or indiscriminate in its exercise of the minimum rate power. Of the many thousands of railroad tariffs filed each year, only a tiny percentage are suspended and investigated. An even tinier percentage are ruled out as unlawful; only a small fraction of 1 percent.

12. In urging removal of the minimum rate power, the railroads have been making a plausible and appealing argument for equality. What they are actually seeking is a special advantage, a privileged niche in the American free enterprise system that is not enjoyed by any other business in the United States. The irony is that they seek this preferred status under the twin banners of equality and free enterprise.

The foregoing points, gentlemen, are the main points which our team of witnesses will endeavor to develop for your consideration. Having outlined them for you I would like, if I may, to offer some general observations of my own, to further lay the groundwork for our presentation.

The Interstate Commerce Act, dating back to 1887, was the first of the Federal regulatory statutes, preceding not only similar regulatory statutes but even the antitrust laws. Thus, the Interstate Commerce Commission is the oldest among our regulatory agencies.

The act, reviewed almost constantly through the years and frequently expanded and modified, represents an intelligent, objective, and highly successful program of regulation in the public interest, and is a credit to the Congress.

The difficult and thankless job of administering this changing and complicated body of law in the public interest has rested always in a Commission which, in the face of continuous criticism and abuse from a variety of always contending and frequently contentious interests, has established a singular and proud record of courage and integrity that has endured for more than 75 years.

Together, Congress and the Commission have given the United States the greatest transportation system in the world, the kind of system which is both a marvel and model toward which other nations can only strive; a living, working, always improving reality which stands in mute defiance of repeatedly fanciful flights into the realm of concocted crisis.

To say that the law is fundamentally sound is not to suggest Utopia or anything bordering on perfection has been achieved. To say that the Commission has done a basically good job under difficult conditions is not to suggest infallibility or to imply agreement with all Commission decisions, policies, and procedures. To point to the undeniable greatness of the American transport system is not to suggest that it is free of problems.

There are bound to be imperfections in a law written and administered by humans and in a transportation system operated by humans. There are bound to be differences of opinion, particularly among contending interests, about details of the law and some of the Commission's applications of the law.

In H.R. 4700, however, we are not dealing with details of the law, or with what might be considered subordinate or collateral imperfections in the law itself or in its administration.

We are dealing instead with the clear-cut and far-reaching question of whether effective regulation in the transportation field is to be continued or discarded.

Because regulation has not blessed us with perfection, do we now repudiate regulation?

H.R. 4700 would repeal the Commission's power and duty to require that the minimum rates on bulk commodities and agricultural products pass the test of reasonableness. These commodities constitute about 70 percent of railroad tonnage.

Virtually everyone connected with the transportation business recognizes that repeal of the minimum rate power with respect to these commodities would lead inevitably to removal of the power with respect to all commodities. This is the avowed objective of the railroads, as they candidly told you when they testified last year.

Removal of the minimum rate power, whether on 70 percent or all of the traffic, would be like removing the mainspring from a watch. A large and complex body of law would remain, but the means for making it work would be gone.

In 1963, the minimum rate power is the foundation stone upon which the entire regulatory structure stands. If it is removed the structure will crash down around our heads with devastating consequences for the entire transportation system and for much of the vast, delicately balanced economy in which transportation plays such a key role.

In consideration of a proposal to summarily remove this foundation, it would seem that the first logical step is to determine who put it there and why.

It was 1919, and your predecessors on this great House committee, among them such figures as the late Sam Rayburn and the late Alben Barkley, carefully studied transportation problems much as you are doing today. They had watched the Interstate Commerce Commission attempt to function without minimum-rate power and they

looked at the results. They rejected the results and urged that the minimum-rate power be established.

In their report on the subject, No. 456, 66th Congress, 1st session, November 10, 1919, they explained:

> With this power the Commission could prevent a rail carrier from reducing a rate out of proportion to the cost of service, by establishing a minimum, below which such carrier could not fix its rate. It would also prevent a rail carrier from destroying water competition between competitive points by prohibiting such carrier from so reducing its rates as to destroy its water competitor.
>
> Circumstances have been cited where the rail carrier destroyed its water competitor by such a reduction of rates as to make it impossible for the water carrier to survive. When once competition was thus driven off the rail rates would be restored or would rise to even higher levels.

Later, on the floor of the House, the committee chairman, Hon. John J. Esch, of Wisconsin, declared:

> You know the story, you can read it upon every mile of every inland waterway of the United States, how the water carrier started, and then the rail carrier paralleled the river bank and made a rate so low that the water carrier had to abandon its line and its route, and after such abandonment the rail carrier raised the rate and the public was no better off and was, in fact, worse off than before.

Thus, Congress established the minimum-rate power, deliberately and after careful consideration, to correct a bad situation and to prevent a return of such conditions.

That was 40 years ago, and the passage of time has only served to increase the need for the minimum-rate power.

In 1920 and prior thereto, the railroads had a virtual monopoly except along the waterways, and the Commission's most important power was its maximum-rate power which prevented gouging of the public. Development of new modes of transportation after 1920 broke the railroad monoply, and in the last 20 or 25 years transportation competition has been so keen and universal that the maximum-rate power is rusty from lack of exercise.

Today, the Commission's most important function is to prevent that keen competition from becoming destructive, and to prevent it from resulting in unjust and damaging discrimination between shippers, between ports, between communities, and even between large regions. As the Commission has told you, it cannot fulfill these paramount functions without its power to regulate minimum rates.

It has been claimed that since the rails no longer have a monopoly, the minimum-rate power no longer is necessary or desirable. This is sophistry and a complete non sequitur.

While they may not enjoy a monopoly, railroad companies are still the giants of the transportation business, and rank among the largest corporations in the United States. Therefore, they are as able as ever to destroy smaller competing companies in any jungle war to the finish.

The existence of competition is a poor argument in favor of monopoly.

On what basis, then, is repeal of the minimum-rate power proposed?

The chief argument and, I would think, the most persuasive one from your standpoint, has to do with the admirable word "equality." I know that as reasonable, fair-minded men, such an argument appeals to you. Therefore, I want to devote the remainder of my statement to this single question of "equality."

In this case the "equality" argument is superficial and diversionary, a smokescreen behind which railroads and some big shippers hope to gain an unjustifiable advantage. Close scrutiny of the "equality" argument establishes two things rather clearly:

First, that the alleged "inequality" is more apparent than real, and

Second, that the administration's proposals for "equality" actually are unacceptable to the railroads and the diminishing number of shippers who have been giving lipservice to this legislation.

In 1935, Congress placed the for-hire trucking industry under regulations which has been described by the Commission as "more comprehensive" than that applicable to railroads. At the behest of agricultural and fishing interests, Congress exempted from such regulation certain defined truck movements of agricultural and fishery products. The railroads, incidentally, are as free as anyone else to operate trucks in this service without ICC regulation.

In 1940, Congress placed domestic water carriers under ICC regulation. However, transportation by water of defined bulk commodities was exempted.

Transportation by railroad of bulk commodities and agricultural and fishery products is subject to ICC regulation. This, the railroads have claimed, constitutes unequal treatment which is prejudicial to the railroads.

To be sure, there has been different treatment as between railroads and trucks with respect to agricultural and fishery products, and different treatment as between railroads and water carriers in the case of bulk commodities.

The question is whether this difference in treatment really constitutes an inequality that cries out for correction.

In this connection, it should be emphasized that the water carriers and motor carriers who are exempt from ICC regulation are not, as usually is implied, free of all Federal regulation. Though exempt from ICC regulation, these so-called exempt carriers are subject to the antitrust laws and the Department of Justice. Conversely, the railroads and other carriers operating under ICC regulations are exempt from most of the antitrust laws, and only because they are under ICC regulation.

The administration, apparently taking the railroad demand for "equality" at face value, has suggested alternative methods of granting the railroads equality if that's what they really want.

In his letter to Congress, dated March 5, 1963, President Kennedy summarized the administration's position as follows:

> The most significant recommendation in my message of last year dealt with the inequality resulting from exempt transportation of bulk commodities by water and agricultural products by truck. All traffic, however, moving by railroad is fully regulated.
>
> I recommended that this inequality be corrected by removing minimum-rate regulation from all transportation of bulk and agricultural commodities, but under the protection of existing laws against monopolistic and predatory trade practices applicable to business generally. In the alternative, appropriate regulation might be applied in the areas presently exempt, as I recommended in my message last year. I therefore, renew my request that, in the interest of equality, one of these solutions be adopted.

As President Kennedy pointed out, one approach to "equality" would be repeal of the present exemptions applicable to water transportation of bulk commodities and truck transportation of agricul-

tural and fishery products, thus placing these operations under ICC regulation and removing them from most of the antitrust laws.

Our industry has made it clear that we are more than willing to accept this approach. The railroad attitude toward this approach, despite their talk about equality, is best indicated by the fact that our efforts to promote it were characterized by the Association of American Railroads as "sabotage."

That brings us back to the other approach, as embraced in H.R. 4700. As you know, this bill is in two parts.

One part would repeal the minimum-rate power with respect to all movements of bulk commodities and agricultural and fishery products, thus eliminating any effective ICC regulation in this area.

The second part of the bill, logically enough and in keeping with the President's messages, would apply in lieu of effective ICC regulation the same antitrust laws which already apply to the so-called exempt carriers.

On the surface, the railroads and some shippers appear to be supporting H.R. 4700. This support is so conditional, however, that it scarcely is worthy of being described as support.

The equivocal nature of this support was described recently in a statement by one of the leading spokesmen for railroad labor. On April 19, in a speech before the National Press Club, G. E. Leighty, chairman of the Railway Labor Executives' Association, stated:

> Time does not permit me to discuss in detail the other railroad myths of alleged discriminatory government policies and overregulation, but let us examine briefly the current propaganda plea of the railroads for "freedom to compete." What the railroads are seeking behind this high-sounding phrase is not the creation of real competition, putting them on the same terms as every other form of transportation, but rather freedom to drive competitors out of business with a bankrupting rate war that would be harmful to shippers, the general public, and the smaller railroads.
>
> The railroads don't really want the "equality of regulation" they say they are seeking. Some of you may have noted the howls of anguish the industry let forth when, as part of legislation which would repeal railroad minimum rate regulation on certain agricultural and bulk commodities, President Kennedy proposed that ratemaking by the railroads should again be brought back under the antitrust laws. The railroads don't want to compete on those terms. They don't want the Reed-Bulwinkle Act repealed. They don't want to have the same antimonopoly provisions which now apply to airline mergers, or to industry in general, applied to rail consolidations.
>
> The fact is that the railroads, instead of being overregulated generally as they claim, have won more exemptions from Federal laws designed to protect the public interest than any other industry. They aren't ready to give up these special privileges.

Because it is becoming such a key issue in this legislation, and because such great emphasis has been placed upon equality, let me reiterate that the so-called exempt carriers are now and always have been subject to each and every one of the antitrust provisions contained in H.R. 4700.

May I repeat, too, that the railroads and their supporters among the shippers refuse to accept all of these antitrust provisions which apply to the exempt carriers.

They apparently hope to prevail upon this committee and the Congress to modify the legislation and thus give them not equality but an unthinkable advantage.

For example, one of the best known and most frequently exercised provisions of the antitrust laws is that which prohibits competitors

in any line of business from sitting down together and agreeing among themselves on what they will charge for their goods or services.

This prohibition against price fixing applies to the business community in general. It applies to the exempt water carriers of bulk commodities and the exempt motor carriers of agricultural and fishery products.

It does not apply, however, to railroads and other carriers whose rates are subject to minimum rate regulation by the Commission. Logically enough, H.R. 4700 would make it applicable to those operations which, under the bill, would be removed from minimum rate regulation.

You are being asked to amend H.R. 4700 so that it removes minimum rate regulation on 70 percent of railroad tonnage and, at the same time, continues to grant immunity from the antitrust law prohibition against price fixing—referred to in the transportation business as collective ratemaking or conference ratemaking.

The railroads and their big-shipper supporters have made it clear that they do not support H.R. 4700 unless it is amended to allow continuance of collective ratemaking with immunity from prosecution by the Department of Justice. The so-called exempt carriers have no such immunity.

What kind of equality would that be? And what kind of attitude is that on the part of those who profess to advocate more competition?

This immunity enjoyed only by regulated carriers is contained in section 5a of the act, and is known as the Reed-Bulwinkle amendment. It was enacted in 1948, as I am sure the chairman will recall.

It is not likely that the Reed-Bulwinkle amendment ever would have been approved in 1948 if the Commission had not possessed the minimum rate power.

In granting this exemption, Congress emphasized that the Commission had been clothed with rate powers which, in effect, would substitute adequately for the antitrust provision.

The report of the Senate committee emphasized that dependence upon the antitrust provision was not necessary—

> in the case of common carriers because the objective of reasonable prices is achieved by other means, that is, by clothing governmental authorities with power to fix reasonable rates and charges. (S. Rept. No. 44, 80th Cong.)

Again, on the House floor March 11, 1948, Congressman Bulwinkle, who coauthored the immunity amendment, urged that it—

> be clearly understood that the bill would not authorize the establishment of rates in any way different from that now required by the Interstate Commerce Act.
>
> The carriers—

he continued—

> would not be permitted to bypass the Commission in establishing their rates. The authority and power of the Commission would not be limited in any way.

H.R. 4700 would limit the Commission's authority and power in a big way. To so drastically limit the Commission's authority and power and, at the same time, allow continued immunity under the Reed-Bulwinkle amendment would make a mockery of the basic underlying justification for the Reed-Bulwinkle amendment.

We were among those who supported the Reed-Bulwinkle amendment in 1948. It has brought no adverse results because the Commis-

sion's rate powers have remained unimpaired. The adverse results would come with a vengeance if the Reed-Bulwinkle immunity were allowed to continue with respect to operations also made immune from the Commission's minimum rate power.

Those who advocate such a move clearly are seeking to have their cake and eat it. They clearly are not advocating equality.

In an effort to rationalize their position, they point out that under H.R. 4700 the railroads still would have to file their rates with the Commission, while the exempt carriers are not required to file. They seem to suggest that this minor difference might somehow justify major differences in the application of the antitrust laws.

The mere filing of rates with a Commission which had been deprived of its minimum rate power would be an almost futile gesture of very little consequence to us or anyone else. It certainly would be a pitiful substitute for the antitrust laws.

No such tongue-in-cheek argument should be allowed to veil the fact that those who have demanded equality find H.R. unpalatable. This fact, coupled with the fact that most of the so-called exempt motor carriers gladly would exchange their present situation for ICC regulation, suggests that if there really is an inequality today it may be against the so-called exempt carrier.

This concludes my statement, Mr. Chairman.

I express appreciation for the fine turnout this morning and for your courteous attention.

The CHAIRMAN. Thank you very much, Mr. Bresnahan.

You have directed your attention primarily to H.R. 4700.

Mr. BRESNAHAN. Yes, sir.

The CHAIRMAN. That, of course, is the real controversial issue in the proposed transportation program though there are, of course, some items in the omnibus bill, H.R. 4701, which will require some discussion.

Mr. BRESNAHAN. Yes, sir.

The CHAIRMAN. But primarily this is the big issue, isn't it?

Mr. BRESNAHAN. As far as we are concerned it certainly is, sir.

The CHAIRMAN. You have done a very good job, and I want to compliment you for it, of expressing the position of your organization and you did say, in order that we may make it very clear as to what this issue is, that insofar as bulk commodities are concerned railroads are regulated by the Interstate Commerce Commission with respect to their rates.

Mr. BRESNAHAN. Yes, sir, as is the trucking industry.

The CHAIRMAN. Yes, but water carriers are not?

Mr. BRESNAHAN. That is correct, water carriers are exempt with respect to bulk commodities.

The CHAIRMAN. Insofar as agricultural and fishery products are concerned, the trucking industry is exempt and the railroad industry is not exempt.

Mr. BRESNAHAN. Truck operators are exempt and anyone can operate the trucks in that service, including the railroads if they care to.

The CHAIRMAN. You have emphasized the antitrust provisions. I do recall in 1948 when the Reed-Bulwinkle bill was considered by this committee and section 5(a) became a part of the Interstate Commerce Act. You have emphasized that trucking industry and the water carriers come under the provisions of the antitrust laws.

Mr. BRESNAHAN. Those which are exempt from ICC regulations, yes, sir.

The CHAIRMAN. Can you point to any particular case where the anti-trust laws have been applied against either water carriers or the trucking industry?

Mr. BRESNAHAN. There have been some. I wouldn't feel qualified to cite them in detail.

The CHAIRMAN. Would you obtain that information for the record?

Mr. BRESNAHAN. Yes, sir. I will be glad to.

The CHAIRMAN. However, at this time you do not think of a single important case?

Mr. BRESNAHAN. I have general knowledge of a case that is pending now involving household goods carriers. I understand it is a case involving price fixing in one of our large midwestern cities. I don't have the details on it, though.

The CHAIRMAN. It would be interesting to me to find out just how effective the provision might be. Taking bulk commodities, and you heard my opening satement a moment ago, could you be a little bit more specific? What are we talking about when we are talking about bulk commodities?

Mr. BRESNAHAN. I am not prepared, Mr. Chairman, to define them in detail beyond the bill itself. I could only make the observation that the Commission in its testimony last year defined them pretty carefully and in fact, as I recall it, listed the various commodities individually. One of the most significant things about this legislation, it would seem to me, is that it significantly broadens the definition of bulk commodities.

In other words, this bill would deregulate many bulk commodities which now are not exempted from regulation when they are transported by water carriers.

The CHAIRMAN. Again, may I ask you to be a little more specific and tell the committee what do you mean when you are talking about products being transported?

Mr. BRESNAHAN. Do you mind, Mr. Chairman, if I call to my lawyer?

The CHAIRMAN. Anyway we can get the information. I don't care how it comes.

Mr. BRESNAHAN. Apparently we have the information here, Mr. Chairman. ICC Chairman Murphy last year when asked a similar question said:

> The principal commodities today that are considered bulk and were such as of June 1, 1959, were coal, coke, grain, sand, crushed stone, cement, gravel, sulfur, salt, seashells, limestone, phosphate rock, iron ore, and molasses.

They apparently are the bulk commodities which are exempt today.

The CHAIRMAN. You mean by water carriers?

Mr. BRESNAHAN. Yes, sir. Chairman Murphy went on to say that:

> Now if this legislation is approved, then the ones that we believe will be brought in—

That is, made exempt—

> and possibly there are others, are aluminum, ammonium nitrate, ammonium sulfate zinc concentrates, feldspar, fluorspar, ferro alloys, ferro manganese, flue dust, fly ash, fertilizer materials, drilling mud, sludge, soybeans, sugar, caustic soda, glycol, linseed oil, methanol, molten sulfur, soybean oil and liquid chlorine.

It would appear that this bill would exempt from regulation about twice as many articles as are exempted today.

The CHAIRMAN. In other words, the motor industry would be exempted from regulation the same as the railroads would under those commodities that are now being regulated?

Mr. BRESNAHAN. Yes, sir, to the extent that motor carriers now transport bulk commodities as defined in this bill, they are now regulated and they would be unregulated by the bill.

The CHAIRMAN. Do you know what percent of the total transportation is considered to be bulk commodities?

Mr. BRESNAHAN. No sir, I don't.

The CHAIRMAN. In the course of the hearings last year it was stated that some 70 percent was.

Mr. BRESNAHAN. In the case of railroads I understand that 70 percent of railroad tonnage is made up of bulk and agricultural commodities combined.

The CHAIRMAN. What percentage of the truck tonnage is made up of bulk commodities and agricultural products?

Mr. BRESNAHAN. I don't know, Mr. Chairman. I am not sure the figure is available, but we will certainly try to get it for you.

The CHAIRMAN. Would it be a greater or less percentage than that metioned insofar as the railroads are concerned?

Mr. BRESNAHAN. I would think a smaller percentage than in the case of the railroads, probably considerably smaller.

The CHAIRMAN. What percentage of the total transportation is by truck, and what percentage is by railroad, and what percentage by water carriers today?

Mr. BRESNAHAN. Mr. Chairman, I understand from our research director that the approximate figures on a ton-mile basis for the last year available was railroads 48 percent, highways 23 percent, water carriers 17 percent. And the remainder I assume would be made up of pipeline and air.

The CHAIRMAN. Of the total bulk commodities you have just mentioned that we have talked about there has some information that 1.2 billion tons of such commodities are transported. Is it not true that a substantial or large part of that would be transported by a particular mode which is better suited for such transportation?

Mr. BRESNAHAN. I would certainly think so.

The CHAIRMAN. Then we are talking about in the controversy, then, a much smaller part or percentage of the total transportation than the information would lead us to believe. As an example, if the total bulk tonnage was 1.2 billion tons, if, to use a figure, 50 percent of that is transported by carriers because their particular type of transportation is suited for it, then actually the controversy here that we are talking about is only over the other 50 percent. Would that be correct or not?

Mr. BRESNAHAN. It may be, Mr. Chairman. I am inclined to think it is a little theoretical, though, because if there were no minimum rate regulation, the fact that one type of carrier might appear now to have an absolute advantage and therefore might be assumed not to be vulnerable if this bill goes into effect, if there is no minimum rate regulation and another carrier wanted to get that traffic, regardless of its cost, regardless of inherent advantages, we could easily find that all of this traffic would be involved.

The CHAIRMAN. Are you saying to us that there is certain transportation, as an example, where the inherent advantage gives it to the truckers, and that if this probably were to be agreed to some other mode might very well take that away from the transportation that has the inherent advantage?

Mr. BRESNAHAN. We are very fearful that that might happen, yes, sir.

The CHAIRMAN. Can you tell us whether or not that is only a fear, or if there is any actuality contemplated with it?

Mr. BRESNAHAN. We feel that the entire transportation history buttresses that fear. We feal that some of the things that are going on an have gone on now, even with minimum rate regulation, would give substance to that fear.

The CHAIRMAN. You are interested in a certain type of haul of bulk commodities, petroleum and so forth?

Mr. BRESNAHAN. Yes, sir.

The CHAIRMAN. And you feel that if such a procedure were to be adopted it would create rate wars that would make it very dangerous.

Mr. BRESNAHAN. We don't think there is any question about it.

The CHAIRMAN. Is there any way that you could see that a limitation could be placed on, say, the amount of tonnage that would remove the fear and danger that you see?

Mr. BRESNAHAN. I am not sure I follow that, Mr. Chairman.

The CHAIRMAN. Suppose there was a long-line haul, New York to San Francisco. You have not stretched the imagination to see that the trucking industry could engage in such because of the inherent danger of both the transportation and the commodity involved?

Mr. BRESNAHAN. There may be cases, but certainly not ordinarily.

The CHAIRMAN. You don't think that the trucking industry would start out to haul petroleum products from New York to California, do you?

Mr. BRESNAHAN. If you are talking only about petroleum, I think the history in that field indicates that there are definite limits on the length of haul.

The CHAIRMAN. I just used that as example. We could use anything else. You said you didn't understand what it meant. You could pose examples and use a lot of things. If there were a limitation of a certain distance haul and the volume that would be necessary to meet the need, then is there some way that this situation could be equalized?

Mr. BRESNAHAN. None occurs to me offhand, Mr. Chairman.

The CHAIRMAN. If the danger that you see to the trucking industry were to be removed because of the length and the volume to eliminate the danger that you see in it, then it still would not be satisfactory?

Mr. BRESNAHAN. I can only answer that by saying that it would not be as dangerous and harmful as the bill is at the moment, but it certainly would be a big, long step toward removal of minimum rate regulation. As I pointed out, this is the ultimate objective of the railroads. They made that entirely clear.

The CHAIRMAN. I hope that the trucking industry will not get your minds so inculcated in this thing to the point that you can't see the forest from the trees, and I will say the same thing to the railroads. In other words, I do not want the industries now to get to the point that the competitive element is the most overriding thing so that you

cannot see anything else at all that might be better for the common carrier transportation system of this country, and I hope that will be kept in mind.

Mr. BRESNAHAN. We certainly will, Mr. Chairman. I am just having a little difficulty coming to grips with the generality. We would be happy to take a good, long look at any specific proposal.

The CHAIRMAN. You have used more generalities in your 14-page statement here than I have in my questioning, and I asked you to be specific in my opening statement and have asked you to be specific since you gave your statement. I am just thinking. Let me ask you this first further.

In the interest of common carrier transportation, under safeguards of regulation, operated by private industry, do you think there is any part of our Interstate Commerce Act that needs strengthening or equalizing to fit the needs of the day?

Mr. BRESNAHAN. I am not prepared to go into the details of the law in other respects, Mr. Chairman. I have merely tried here to outline the testimony which will be given in more detail by other witnesses, and I want to try to answer the questions when they are asked and I would be happy to have our general counsel come up and go into some of these detailed phases of law. I am simply not qualified to do it.

The CHAIRMAN. I want to say this also to other witnesses who will follow. I hope you will be in position to answer questions that this committee might ask and not be coming up with a canned position here and giving the committee what you have developed down in the office somewhere and we are not permitted to discuss fully the entire situation. I want to say that as far as all the modes interested, water carriers, truckers, and railroads as well as airlines. I think you ought to be able to do it because I can't but feel that we are talking too much about 1919 and 1887 when we are now living in 1963.

I don't think there is anybody that would contend that we are not living under different and changed conditions today than we were 75 years ago or even 25 years ago.

Mr. BRESNAHAN. I certainly would not, Mr. Chairman.

The CHAIRMAN. You mentioned a moment ago the antitrust laws, and appropriately so, but has not the motor industry developed what is called a motor freight bureau procedure in the various sections of the country wherein rates are determined?

Mr. BRESNAHAN. The regulated motor carriers operate under the Reed-Bulwinkle exemption and, therefore, make rates collectively, just like the railroads.

The CHAIRMAN. You made a great to-do in your statement about how the railroads were exempted from antitrust laws, but not your industry.

Mr. BRESNAHAN. No; I was pointing out that it is one thing to be exempted under the Reed-Bulwinkle amendment when the Commission has complete rate power, as it has today, but it is another matter to remove the Commission's rate power and continue to allow such immunity from the antitrust laws. I said in my statement that we supported the Reed-Bulwinkle amendment at the time it was proposed and enacted. Our regulated carriers are under the immunity granted by that act provided they have ICC approval.

The CHAIRMAN. Are your motor freight bureaus operating under the Reed-Bulwinkle Act?

Mr. BRESNAHAN. Yes, sir.

The CHAIRMAN. You have a Southwestern Motor Freight Bureau, you have an Eastern Motor Freight Bureau, and others in other sections of the country.

Mr. BRESNAHAN. Yes, sir.

The CHAIRMAN. Are you familiar with it enough to give the committee an explanation of what it does and how it is set up?

Mr. BRESNAHAN. I can do it only in most general terms. We have our traffic director here, though, who could give it to you in detail, if I may call him up.

The CHAIRMAN. Is he scheduled as a witness?

Mr. BRESNAHAN. No, sir; he is not, but he is here available today.

The CHAIRMAN. I think I would like to get that later on when we get through. I did not intend to use as much of the time myself, but I did want to try to get a few of these things cleared up in the record to start with.

Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Bresnahan, on the first page of your testimony you make the statement that:

> H.R. 4700 would repeal the Interstate Commerce Commission's long-standing power and duty to require the maintenance of reasonable minimum rates for the transportation of bulk commodities and agriculture fishery products.

Mr. BRESNAHAN. Yes, sir.

Mr. YOUNGER. That only applies to railroads, does it not? The way your statement reads you would think that it applied to all transportation.

Mr. BRESNAHAN. It would apply to all transportation, Mr. Younger. To the extent that motor carriers, or railroads, or anyone else now haul bulk commodities, they are regulated by the Commission. This bill would remove minimum rate regulation on bulk traffic by rail and bulk traffic by truck which is now regulated.

Mr. YOUNGER. But not bulk traffic by inland waterways?

Mr. BRESNAHAN. Bulk traffic by inland waterways already is exempted. This is part of what the shooting is about.

Mr. YOUNGER. The agricultural and fishery products are exempt under your truck transportation?

Mr. BRESNAHAN. That is correct, sir, and the bill would now exempt them by rail and water.

Mr. YOUNGER. Would exempt?

Mr. BRESNAHAN. Agricultural and fishery products.

Mr. YOUNGER. They are now exempt.

Mr. BRESNAHAN. By truck. They are now regulated by rail and water and this bill would remove regulation on those products when they move by rail or water.

Mr. YOUNGER. By rail?

Mr. BRESNAHAN. And water.

Mr. YOUNGER. Depending on which it is, but the way you have it worded here you would think that the ICC now has the power to enforce minimum rates on bulk commodities and agricultural and fishery products and they do not have that authority as relates to two of the modes of transportation.

Mr. BRESNAHAN. I see what you mean, Mr. Congressman. I tried to briefly summarize the bill in this particular paragraph.

Mr. YOUNGER. I think you summarized it a little too briefly. If somebody were reading that he would get the wrong impression. As I understand it, your organization was perfectly willing to accept the recommendation of the ICC. When they recommended before this committee the abolition of all exemptions.

Mr. BRESNAHAN. Yes, sir.

Mr. YOUNGER. Do you think for a minute that it is practical to get any relief of exemption of agricultural and fishery products as a practical matter?

Mr. BRESNAHAN. If we had thought so we are inclined not to think so any more and you can notice in my statement I said very little about it.

Mr. YOUNGER. I know, but aren't you there talking about something that you know in your own mind is not a practical action for Congress to take?

Mr. BRESNAHAN. I am rapidly coming to that view, yes sir.

Mr. YOUNGER. Thank you.

On page 4 you make mention of empowering the Federal Trade Commission to issue cease and desist orders for the purpose of preventing damage before it occurs. My questions is this: Is your organization advocating the recommendation here that the Federal Trade Commission shall have the power to issue a cease and desist order without even a hearing?

Mr. BRESNAHAN. No, sir; we are not advocating that.

Mr. YOUNGER. That is what FTC are advocating? That is what this means?

Mr. BRESNAHAN. We are not advocating at all. I was merely trying to point out that if this legislation is enacted, even with the present antitrust laws, you would still not be able, as you presently are under ICC regulation, to prevent damage before it occurs. I was merely trying to point out here that this has been recognized as a weakness in the antitrust laws.

Mr. YOUNGER. Does your organization advocate the policy of the Government stepping in and issuing cease-and-desist orders without even hearings to determine whether damage might occur?

Mr. BRESNAHAN. No, sir.

Mr. YOUNGER. This statement would rather imply that.

Mr. BRESNAHAN. If it does, then I would like to make it entirely clear that such was not the intention and I was merely trying to make another point.

Mr. YOUNGER. That is what occurred to me. I doubt that your organization could ever get out on that limb.

On page 8 you make quite a statement about what was said about the transportation problems by former Speaker Sam Rayburn and Alben Barkley, but at that time there was no such thing as the exemptions on fishery products and agricultural products and bulk commodities, was there? That did not occur until 1935.

Mr. BRESNAHAN. Well, actually, in 1920 there was no trucking industry to speak of and until 1935 not only the agricultural products, but all truck movements were exempt from ICC regulation because it was in 1935 that Congress decided to regulate motor carrier transportation and place it under the Interstate Commerce Act.

Mr. YOUNGER. That is true, so that when they were speaking at that time they were not speaking with any knowledge at all of these exemptions with which we are dealing today?

Mr. BRESNAHAN. Only in the sense that the water carriers were competing with the railroads in those days and were completely exempt from ICC regulation.

Mr. YOUNGER. That is right. Therefore, you had no ICC regulations on water carriers and trucks at the time you are quoting them, isn't that correct?

Mr. BRESNAHAN. That is correct; yes, sir.

Mr. YOUNGER. So that what they might have said later on in the light of ICC regulations on inland waterways and motor carriers might have been an entirely different statement; it could have been.

Mr. BRESNAHAN. It certainly could have been. I have tried to contend here that we would have felt, as we do, that the minimum rate regulation is more necessary today than it was when they applied it in 1920.

Mr. YOUNGER. You are quoting them, but they were speaking out of an entirely different knowledge and in an entirely different time than we are speaking now.

Mr. BRESNAHAN. That certainly is true, sir.

Mr. YOUNGER. On page 10 you refer to the alleged inequality being more apparent than real, and yet on page 12 you quote the President, who very definitely refers to the inequality, so apparently the President in his message did not consider that the inequality was a matter more apparent than real. He did not qualify it at all. He spoke of the inequality and admitted there was inequality.

Mr. BRESNAHAN. He stated there was one.

Mr. YOUNGER. Yes. You now say that he was probably misinformed or should not have said that because the inequality is more apparent than real?

Mr. BRESNAHAN. I believe it is, sir?

Mr. YOUNGER. You believe it is?

Mr. BRESNAHAN. Yes.

Mr. YOUNGER. You believe that the President was wrong then?

Mr. BRESNAHAN. I believe the President is right in suggesting equality. I think he took the complaint about inequality at face value.

Mr. YOUNGER. Then you believe he was poorly advised?

Mr. BRESNAHAN. Yes, sir.

Mr. YOUNGER. I just want to get those things clear. You are familiar, of course, with our 1958 Transportation Act?

Mr. BRESNAHAN. Yes, sir.

Mr. YOUNGER. At that time all the modes of transportation agreed that each mode of transportation should be permitted to exercise its inherent advantages to the benefit of the shipper. Isn't that true?

Mr. BRESNAHAN. That was not precisely what the legislation did, but I think in general terms what you say is correct. I think the principle is correct.

Mr. YOUNGER. I sat through all of those hearings, and if my recollection is correct we had all of the modes of transportation agree to that general philosophy.

Mr. BRESANHAN. Yes, sir; I think that is a fair statement.

Mr. YOUNGER. So that what we are trying to do now is to see to it that each mode of transportation does have the right to exercise its inherent advantages. If I understand your statement correctly, you state that it would be all right to abolish the minimum rates for the railroads, provided they put the railroads under the same control of the antitrust laws under which you operate. Is that a true statement?

Mr. BRESNAHAN. No, sir, not exactly. We think that removal of the minimum rate power is a step in the wrong direction in any event. What I did say was, however, that if Congress, nevertheless, is going to remove the minimum rate power, then we do believe that the carriers with respect to which the minimum rate power is removed should be made fully subject to the antitrust laws.

Mr. YOUNGER. I have gathered from your statement all the way through that that was the conclusion which you are willing to accept and that the motor carriers are willing to accept, that if we are to abolish the minimum rate, then if we put the railroads under the same antitrust regulations under which you and the waterway carriers operate it would be acceptable. I may have misunderstood your statement, but you repeated that several times in your statement.

Mr. BRESNAHAN. May I restate the position briefly then, so there will be no misunderstanding about it.

Mr. YOUNGER. Yes.

Mr. BRESNAHAN. We are opposed to removal of the minimum rate power in any case. If, however, the minimum rate power is removed, then we believe all of the antitrust laws should be substituted.

Mr. YOUNGER. Then if the minimum rate powers are not removed, how do you propose to see that the railroads as a mode of transportation has the same equality as the motortruck industry or water carriers?

Mr. BRESNAHAN. Of course, there are two ways that the railroads could obtain this equality if it is precise equality that they want. One would be by removal of the present exemption for the agricultural trucks, which we seem to agree does not seem to be in the cards.

Mr. YOUNGER. We can wash that out because that is not a practical solution.

Mr. BRESNAHAN. The other way would be for the railroads to operate trucks in that service. There are no restrictions. They may now operate trucks in that exempt agricultural service if they want to render it, completely free of ICC regulation and under the same terms and conditions as those trucks which are performing that exempt service.

Mr. YOUNGER. You welcome that competition then in the trucking field?

Mr. BRESNAHAN. We would be happy to have the railroads operate trucks in that service if that is what they want to do.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. Mr. Bresnahan, you dealt at some length with the legislative history of the establishment of the minimum rate regulation. On page 8 you cited the report of the committee in the 66th Congress which imposed these rates. In citing that you stated:

> With this power the Commission could prevent a rail carrier from reducing a rate out of proportion to the cost of service, by establishing a minimum, below which such carrier could not fix its rate.

Is that your understanding of the purpose of the law as it works today?

Mr. BRESNAHAN. I think certainly the cost of service is one of the dominant factors considered by the Commission in determining whether a rate is reasonable; yes, sir.

Mr. WILLIAMS. In other words, it must meet the test of reasonableness and also the cost of service?

Mr. BRESNAHAN. Under the present law; yes, sir.

Mr. WILLIAMS. Under the present law.

Mr. BRESNAHAN. Yes, sir.

Mr. WILLIAMS. I believe on page 7 you contend that H.R. 4700 would repeal this power to require that they pass the test of reasonableness.

Mr. BRESNAHAN. Yes, sir.

Mr. WILLIAMS. I go back in your statement to page 4 in subparagraph 14 where you state that railroad rates on bulk and agricultural commodities already are the most depressed rates in the railroad rate structure, and you make the charge "frequently yielding less than out-of-pocket cost."

How did that come about in view of what you have just told me that the law requires?

Mr. BRESNAHAN. First, there is no question but that some of these rates are below out-of-pocket cost.

Mr. WILLIAMS. Can you give us a specific example?

Mr. BRESNAHAN. Yes, sir. I think we can probably give you several specific example. Pardon me just a moment. This is a fairly lengthy list, Mr. Williams. Would you like me to read it?

Mr. WILLIAMS. I don't see any need to read all of the list, but could you give us just one or two examples?

Mr. BRESNAHAN. Sugarbeets, vegetables and preparations, fruits and preparations, apples, cantaloups, citrus fruits, peaches, pears, watermelons, cabbage, celery, lettuce, onions—I might as well go ahead—potatoes other than sweet, tomatoes——

Mr. WILLIAMS. I think that is enough. These are agricultural commodities which you covered. Mr. Friedel asks about bulk commodities, other commodities.

Mr. BRESNAHAN. Some of these are listed here, too, some of the bulk commodities. They are at the bottom of the list.

The CHAIRMAN. Let that list go in the record if there is no objection.

(The list referred to follows:)

Bulk commodity returning less than out-of-pocket cost

	Tons
Sugarbeets	8,726
Straw	54
Vegetables and preparations	594
Fruits and preparations	83
Apples, fresh (not frozen)	251
Cantaloupes and melons, n.o.s.	308
Grapes, fresh	260
Citrus fruits	850
Peaches, fresh not frozen	121
Pears, fresh not frozen	151
Watermelons	88
Cabbage	120
Celery	305
Lettuce	779
Onions, dry	232
Potatoes, other than sweet	3,209
Tomatoes	160
Vegetable oils, fats and waxes (inedible)	76
Distilled spirits, malt liquors, and wine	515
Limestone, crushed	61,502
Sand gravel and crushed rock	58,894
Aluminum ores concentrates	3,063
Stone rough, n.o.s.	1,649
Gasoline	6,510
Petroleum crude	1,760
Petroleum products n.e.c.	8,923
Slag, metal refuse	5,890
Total	165,073

NOTE.—27 commodities 165,073 tons, 19 percent of total bulk and agricultural tonnage; 27 commodities out of 102 which are bulk and agricultural.

Mr. WILLIAMS. Is that a matter of opinion on your part, or do you have proof that they are yielding less than the out-of-pocket cost?

Mr. BRESNAHAN. As I understand it, this is on the basis of ICC computations taken from this Commission document entitled "Distribution of the Rail Revenue Contribution by Commodity Groups, 1960."

Mr. WILLIAMS. Is that a publication of the ICC itself?

Mr. BRESNAHAN. Yes, sir. "Statement No. 262, Washington, D.C., May 1962."

Mr. WILLIAMS. Let me ask you this question: Does not the Interstate Commerce Act impose upon the Commission the responsibility to insure that minimum rates will be compensatory?

Mr. BRESNAHAN. I think reasonably compensatory and just and reasonable.

Mr. WILLIAMS. Then if the Commission is permitting the railroads to go below compensatory rates, the law which you praised so highly is not working too well, is it, to proetct the interest of the motor carriers?

Mr. BRESNAHAN. I suggested in my direct statement that we thought there was too much discrimination and destructive competition that had already been allowed to creep into the rate structure.

Mr. WILLIAMS. Do you feel that that is the fault of the act itself or is it the fault of its administration?

Mr. BRESNAHAN. It is my feeling that the Commission has been very liberal in allowing the railroads to make rates in these exempt areas.

Mr. WILLIAMS. Do you feel that the Commission should permit minimum rates to go below the compensatory level under any circumstances, when one mode is competing with another mode for the freight?

Mr. BRESNAHAN. Of course, Mr. Williams, we are getting into definitions here. I think as a general proposition one form of transportation should not be allowed to establish below cost rates for the purpose of taking business away from a carrier which actually has the inherent advantage and the actual low cost.

Mr. WILLIAMS. Could you say at this point whether in your opinion the motor carrier industry is a healthy industry?

Mr. BRESNAHAN. Reasonably so.

Mr. WILLIAMS. On the basis of your knowledge of the situation would you say that the rails are enjoying good economic health?

Mr. BRESNAHAN. I would say reasonably so. There are exceptions, but there are exceptions in the trucking business, too, and in almost any business.

Mr. WILLIAMS. In your statement you dealt rather emphatically with the proposition that the rails are the giants of the transportation industry. I do not think anyone would question the fact that the rails are probably the largest of all. Do you know how much the rails grossed last year?

Mr. BRESNAHAN. I think around $10 billion.

Mr. WILLIAMS. It was testified before the Subcommittee on Transportation and Aeronautics about 3 weeks ago, and I believe substantiated also by testimony of Mr. Pinkney, that in 1961—that is 2 years ago—the gross revenues of the railroads approximated $9.5 billion. That is a pretty large industry. Can you tell me just how large the motor carrier industry is by comparison?

Mr. BRESNAHAN. In aggregate terms?

Mr. WILLIAMS. Yes, sir.

Mr. BRESNAHAN. I think today it is probably approximately as large as the railroads on freight.

Mr. WILLIAMS. I believe it was testified that in 1961 the motor carrier industry had gross revenues of approximately $7.5 billion.

Mr. BRESNAHAN. That sounds about right.

Mr. WILLIAMS. So when you speak of the giant railroad industry, we must also use the term "giant" in speaking of the motor carrier industry. Isn't that a fair statement?

Mr. BRESNAHAN. That is certainly a fair statement if we are going to deal in the aggregates. Of course, in my statement what I had in mind was the individual companies or corporations, and in this respect there is no comparison.

Mr. WILLIAMS. However, as an industry they are almost equal?

Mr. BRESNAHAN. Yes, sir, in the aggregate.

The CHAIRMAN. Mr. Glenn?

Mr. GLENN. No questions.

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. Thank you, Mr. Chairman. Quite a few questions I wanted to ask have already been covered. However, there is a sentence here on page 9 I would like to have a little clarification of. You state:

> Development of new modes of transportation after 1920 broke the railroad monopoly, and, in the last 20 or 25 years, transportation competition has been

so keen and universal that the maximum-rate power is rusty from lack of exercise.

Is that lack of exercise because of the ICC, or can you give any specific examples? It is very general, and I would like to know what you meant by that statement.

Mr. BRESNAHAN. What I was attempting to convey, sir, was that competition has effectively kept rates from going too high and, therefore, there has been little need for the Commission to move in and find that a rate exceeded a reasonable maximum because of the widespread competition. That problem has been pretty well taken care of.

Mr. FRIEDEL. In other words, the maximum rate is rusty from lack of exercise in using it?

Mr. BRESNAHAN. No; for a lack of need for exercising it. There has been very little need for exercising the maximum-rate power, in view of the existence of all this competition.

Mr. FRIEDEL. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. Thank you, Mr. Chairman.

Mr. Bresnahan, it must be quite refreshing to the Interstate Commerce Commission to be referred to in such flowery terms as your industry has, speaking of their proud record of courage and integrity in their enforcement of the Interstate Commerce Act. I think I note, however, throughout your statement a note of bitterness, by the nature of the terms you use, such as "concocted crisis," "sophistry," and "lipservice," "diversionary," "superficial," "unjustifiable," and "smokescreen;" and things of that nature, with "tongue in cheek." I was wondering if it is the position of your organization that you think the situation should remain status quo, that no legislation is necessary in this area whatsoever?

Mr. BRESNAHAN. We certainly feel that no legislation is necessary in the direction of removing minimum-rate power. There are undoubtedly other things which could be done to improve the act, and to improve conditions in transportation. We think there are some in the other bill that is before you. I do not suggest that there would be any unanimous opinion among everybody in the transportation business on some of these suggestions.

Mr. DEVINE. I think that is a safe statement. As far as you are concerned, relating to H.R. 4700, the defeat of that legislation would be satisfactory as far as your organization is concerned?

Mr. BRESNAHAN. As far as this bill is concerned, yes, sir.

Mr. DEVINE. That is all. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. Mr. Bresnahan, in your statement you predicted if the Congress passes H.R. 4700 that some dire results will follow. I refer specifically to page 2 of your testimony, and point No. 2, that you and your witnesses will make.

> Removal of minimum-rate controls would be the signal for widespread and ruinous rate wars. No longer required to be "reasonable," rates would become "unreasonable." Operating cost and value of service could be, and would be, ignored. The ratemaker would be concerned with only one question: "How low must my rate be to grab the business?"

In view of this comment, the thought that occurs to me, and on which I would like a reaction from you, is this: Congress is in session

almost all of each year at the present time. It was September before we adjourned the year before last, and the middle of October last year. This committee, and the same committee in the Senate, sits nearly all of the year, working in the field of transportation problems. If anything like the results developed following, let's assume, the passage of a bill like H.R. 4700, is not it reasonable to suppose that the Congress would act quickly to remedy the results of the type that you mention here?

Mr. BRESNAHAN. I would be very confident that the Congress would; but, I think a great deal of irreparable damage would be done before the remedy could be had, and put into effect. We can see no point in walking into such a situation unnecessarily. We think it is inevitable that this would result, and the Commission itself has pretty much taken the same stand. The Chairman said, without qualification, that this would result in widespread rate wars.

Mr. JARMAN. Of course, the committee, in hearings last year on this same subject, has testimony to the contrary from other witnesses. One of the real difficulties in writing legislation is to anticipate exactly what the results of that legislation will be; but, my own reaction to that conclusion in your statement is that if such results began to show in our national transportation system, the appropriate committees of the Congress, and the full Congress itself, would take whatever legislative action necessary to correct such a development.

Mr. BRESNAHAN. I would have the same faith in the Congress, and I hope that they will see that this would be the result and anticipate it, and, therefore, not pass this legislation.

Mr. JARMAN. That is all I have.

The CHAIRMAN. Mr. Broyhill?

Mr. BROYHILL. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. None at the moment, Mr. Chairman.

The CHAIRMAN. Mr. Brotzman?

Mr. BROTZMAN. I have one question, if I may. Turn to page 5 of your statement, would you, Mr. Bresnahan?

Mr. BRESNAHAN. Yes, sir.

Mr. BROTZMAN. I don't know if you elaborated on the content of paragraph 12 prior to my arrival, but I would like to ask you a couple of questions. You allude to the rails seeking a special advantage, a privileged niche in the American free enterprise system that is not enjoyed by any other business in the United States.

I would understand that this particular bill, H.R. 4700, would exempt bulk, agricultural, and fishery commodities by rail, an exemption that I understand is presently enjoyed by the motor carriers. Is that correct?

Mr. BRESNAHAN. The agricultural and fishery exemption is now enjoyed—if you can call it that—by truck operators, but these truck operators are subject to all of the antitrust laws in H.R. 4700.

Mr. BROTZMAN. Just one question at a time. I don't mean to trap you with the word "enjoy." That is merely a term I use. It is not a term of art.

Mr. BRESNAHAN. Everybody uses it.

Mr. BROTZMAN. All right. With that background, now could you direct your attention to the specific question, which is, What is this special advantage? Perhaps you were just starting to answer that,

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but I would like to understand what your argument is, specifically, on that point.

Mr. BRESNAHAN. Yes, sir. This bill would remove minimum-rate regulation on bulk and agricultural commodities and to that extent provide equality with those carriers who are now exempt from ICC regulation. The second part of this bill would apply to these newly exempted operations, precisely the same antitrust laws which apply now and always have applied to the so-called exempt carriers, and we find that this bill is not palatable to the railroads or to those segments of the shipping public which have been supporting it. They are seeking amendment of H.R. 4700 to give them this immunity from the minimum-rate regulation by the ICC, but they want to continue the advantages that grow from ICC regulation, and most particularly they want to continue to have the right to make rates collectively with immunity from the price-fixing prohibitions of the antitrust laws. This bill would remove that present immunity and, while granting relief from the minimum-rate power of the ICC, it would make those rates so relieved from ICC regulation subject to the antitrust laws, including the prohibition against price fixing, and this is why I say they are seeking a special niche that no other industry enjoys.

Mr. BROTZMAN. Which antitrust laws specifically are you alluding to?

Mr. BRESNAHAN. By section and number?

Mr. BROTZMAN. No; just which acts. This is major background information I understand for the committee. I am just trying to understand.

Mr. BRESNAHAN. Our general counsel is going to devote his entire testimony to this question, but if you would like it we would like to give you the answer right now and I will have him come up here.

Mr. BROTZMAN. If you intend to, in the course of your presentation, discuss the antitrust laws in some detail, as to which provisions are applicable and which ones you are talking about, I will withdraw my question in that regard.

Mr. BRESNAHAN. He will devote his entire testimony to that question.

Mr. BROTZMAN. I have no further questions.

Mr. BRESNAHAN. I might say to the gentleman I hope to get to him in the morning the first thing, if we can.

Mr. BROTZMAN. I have no further questions.

The CHAIRMAN. Mr. Hemphill?

Mr. HEMPHILL. Thank you, Mr. Chairman. Would you support H.R. 4700 if all commodities were free of minimum-rate legislation?

Mr. BRESNAHAN. No, sir.

Mr. HEMPHILL. But still subject to the antitrust laws? Suppose they were all exempt but still subject to the antitrust laws. Would you support it?

Mr. BRESNAHAN. No, sir; we favor ICC regulation. We think it is the correct course.

Mr. HEMPHILL. But you are happy to have the exemption for your own industry?

Mr. BRESNAHAN. The truth is, Mr. Hemphill, that we are very unhappy to have the exemption and would like very much to see it removed, but we are told that this is politically impractical.

Mr. HEMPHILL. Then if you are unhappy I gather that the matter of inequality is no longer an intangible, but a tangible. You think there is inequality now, do you?

Mr. BRESNAHAN. As I said in my statement, the fact that the railroads find this bill applying the same antitrust laws that the other exempt carriers are under unpalatable, coupled with the fact that the exempt motor carriers would be very happy to exchange their present situation for ICC regulation, suggests that if this difference in treatment does result in an inequality, perhaps it is one that is detrimental to the exempt carriers.

Mr. HEMPHILL. But you would not want to swap places with the railroad industry, would you?

Mr. BRESNAHAN. The overwhelming bulk of the industry I am here representing is regulated just like the railroads and when you speak of this exemption you are speaking of a small segment of the overall trucking industry that is engaged exclusively in the movement of these exempted commodities.

Mr. HEMPHILL. That is exactly what I am getting at. It is really impractical for the trucking industry to try to move agricultural commodities and fishery products over a long distance, is it not?

Mr. BRESNAHAN. No, sir; I think these refrigerated trucks move very long distances.

Mr. HEMPHILL. I happen to have in mind the fact that in my own district we had some distressed areas and I was trying to get some grain. If we could have gotten minimum rates these farmers could have gotten their grain, but the railroad rates were fixed. We could not get the trucking industry to put the grain down there because the cost was prohibitive, and so a consuming segment of the population was affected. It seems to me here that I did not hear any testimony last year, and I have not heard any so far today, about the consuming public. Isn't the consuming public going to benefit because of competition, with lower rates on grain, and salt, and coal, and I see over here fertilizer materials, soybeans, and others? Isn't the public going to benefit by the lower rates if there are lower rates?

Mr. BRESNAHAN. I believe that the railroad rates, for example, on these commodities in general are the most depressed rates in the railroad rate structure, frequently failing to yield even out-of-pocket cost. Conceivably if the railroads, for their own purposes, made significant further cuts in these already depressed rates, there might be temporary advantages to some shippers, but in the long run that bill is going to have to be paid and it undoubtedly would have to be paid in part by shippers of other products and ultimately by the shippers of these products involved because they could not go on indefinitely operating way below cost, so there might be some temporary advantage, but it would be very temporary and I think in the long run would be very costly.

Mr. HEMPHILL. You say you are against H.R. 4700. What alternate do you propose?

Mr. BRESNAHAN. We had proposed some modification in the existing exemptions, repeal or rollback, but we found ourselves standing pretty much alone. In other words, that is the alternative offered by the President.

Mr. HEMPHILL. You told someone on examination a while ago that competition has effectively kept the rates from going too high. You made that statement a while ago, did you not?

Mr. BRESNAHAN. Yes, sir.

Mr. HEMPHILL. If the railroads were given the same equality by being given the exemption, plus being put under the antitrust laws that you say you are under, won't that still give fair competition to you?

Mr. BRESNAHAN. I think that probably would be absolutely equality in terms of the conditions that exist today, but I think probably you would still need some antitrust laws that are not now applicable even to the exempt carriers.

Mr. HEMPHILL. Would that cause the rates to be lower for the consuming public?

Mr. BRESNAHAN. This is difficult to anticipate. I feel personally that the Department of Justice and the courts would have a terrible time trying to cope with anything as complicated as transportation and transportation rates. On the other hand, Judge Loevinger, the head of the Antitrust Division, testified last year that as far as the Department of Justice is concerned, rates or charges that are below cost constitute a prima facie case under the antitrust laws.

Today, according to the ICC figures, you have below-cost rates in the transportation structure now, so it is conceivable that if you moved in that direction and the Department of Justice set up a transportation section of some size, as they once had prior to 1948, you might find enforcement pretty rigid and you might even find increases in some of these rates that are now allowed by the Commission.

Mr. HEMPHILL. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. The House is going into session. We will be called over there right away. I imagine some other members have some questions of this witness. It is my intention to get permission to meet during the general debate this afternoon. I thought if we could come back about a quarter to 2 we could get in about an hour and a half if it meets with the committee's approval to do that.

Would there be any question in anybody's mind about it?

We will meet, then, at a quarter to 2 with the understanding as soon as the general debate on the bill is over, then we will adjourn until the morning at 10 o'clock, so you be back at a quarter of 2.

Mr. BRESNAHAN. Yes, sir.

(Whereupon, at 12:05 p.m. a recess was taken until 1:45 p.m.)

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order.

Mr. Kornegay, do you have any questions?

Mr. KORNEGAY. No, sir; I have no questions, Mr. Chairman.

Mr. CHAIRMAN. Mr. Moss, do you have anything at this time?

Mr. Moss. I have no questions at this time, Mr. Chairman.

The CHAIRMAN. Does any other member of the committee?

Mr. HEMPHILL. Mr. Chairman, if I might be recognized, I hope in the futuer that some of the witnesses that testify before us will consider in their testimony the impact of this legislation, either its passage or its failure, upon the consuming public, because I think they should be considered here, the public at large and especially the public

consumer of the transportation facilities. That is the reason I directed those questions to you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Bresnahan, in order that we might gain emphasis on what the situation—is it not true that the common carriers, railroads, are regulated as to bulk and agriculture, as well as class haul?

STATEMENT OF WILLIAM A. BRESNAHAN, ASSISTANT MANAGING DIRECTOR, AMERICAN TRUCKING ASSOCIATIONS, INC., WASHINGTON, D.C.—Resumed

Mr. BRESNAHAN. Yes, sir; they are.

The CHAIRMAN. In other words, they are regulated on everything they transport?

Mr. BRESNAHAN. That is correct.

The CHAIRMAN. Insofar as the motor regulation is concerned, you are regulated on bulk haul?

Mr. BRESNAHAN. Yes, sir.

The CHAIRMAN. Of course, any class freight that you may transport.

Mr. BRESNAHAN. Everything except the agricultural and fishery products.

The CHAIRMAN. You are exempted on agriculture and fishery products?

Mr. BRESNAHAN. Yes, sir.

The CHAIRMAN. And your rates are requlated on everything else?

Mr. BRESNAHAN. That is correct.

The CHAIRMAN. The water carriers, some are exempt on bulk haul and some are regulated on bulk haul; is that right or not?

Mr. BRESNAHAN. As I understand it, you have two classes of water carriers, one totally exempt, others totally regulated. It is my understanding, however, that the regulated carriers within certain ground rules may transport the exempted commodities.

The CHAIRMAN. Are they exempted on agricultural haul?

Mr. BRESNAHAN. No, sir. Only to the extent that a commodity like grain might be both an agricultural commodity and a bulk commodity.

The CHAIRMAN. I think probably someone else can give us a little clearer picture of that distinction. You and Mr. Younger a moment ago, or rather, very early today, were discussing the matter of bringing the motor industry under regulation as far as agricultural and fishery products are concerned. As I understand, both of you expressed some doubt that from a practical standpoint it could be done.

Mr. BRESNAHAN. We have not felt so, but it begins to appear so. Everyone else seems to think so.

The CHAIRMAN. What would be your reaction to bringing the motor carrier operation under regulation insofar as the rates are concerned, but with no entry requirements; that is, without having to make a showing of convenience and necessity?

Mr. BRESNAHAN. Our position would be one of complete support.

The CHAIRMAN. Your position would be one of complete support for that procedure?

Mr. BRESNAHAN. That is correct.

The CHAIRMAN. That is interesting. We have gotten that far. What would be your position on bringing into regulation all of those bulk commodities that are not now brought under regulation?

Mr. BRESNAHAN. Complete support.

The CHAIRMAN. Would you give them the same—what did you call that—enjoyment on not having any entry requirements?

Mr. BRESNAHAN. Yes, sir.

The CHAIRMAN. I want to thank you on behalf of the committee. I do want you to clearly understand that some of these questions we ask here are in an effort to develop the entire picture for the members of the committee.

We want to thank you for your appearance here and your testimony and response to the questions.

Mr. BRESNAHAN. Thank you, sir.

The CHAIRMAN. Mr. Donald Kipp.

STATEMENT OF DONALD P. KIPP, PRESIDENT, KRAMER BROS. FREIGHT LINES, INC., DETROIT, MICH.

Mr. KIPP. Mr. Chairman and gentlemen—

The CHAIRMAN. You may identify yourself for the record and proceed.

Mr. KIPP. My name is Donald P. Kipp and I am president of Kramer-Consolidated Freight Lines, Inc., of Detroit, Mich., a motor common carrier of general freight. I am also a member of the Executive Committee of the American Trucking Associations, Inc., and a member of the board of governors and chairman of the Policy Committee of the Regular Common Carrier Conference of ATA. Although my educational training has been that of a lawyer, I have spent my entire adult life in the field of transportation.

I want to thank the chairman and the members of the committee for this opportunity of testifying before them in opposition to H.R. 4700. I sought the opportunity because I am personally deeply disturbed by what I know will be the effects of that proposed legislation.

The proponents of H.R. 4700 say that inasmuch as certain traffic can move by motor carrier or water vessel in unregulated transportation, the power of the Interstate Commerce Commission to fix minimum rates on that traffic when moving by rail ought to be eliminated.

They propose the complete elimination of the minimum rate power over the transportation of such commodities between all points without regard to whether or not unregulated water carrier or unregulated motor carrier competition exists at the present time. Thus the paramount consideration which has been laid before Congress in support of this bill is the existence of competition between the three modes of physical carriage, the railroads, the water carriers, and the motor carriers.

What has been overlooked, and the matter which lies at the root of my own personal disturbance, is the fact that all regulation of transportation for the past 75 years has been for the purpose of preserving, promoting, and fostering wholesome competition in the commerce of our Nation. This is plain from the very beginnings of the Interstate Commerce Act.

One of the principal reasons for its passage was the fact that the rails, beset with competition between and among themselves, assessed

much lower rates between points where that competition existed than they charged between other and noncompetitive points. The result was that the producers, the manufacturers, and the consumers who could take advantage of the competitive rates were thereby placed in a far more advantageous position vis-a-vis their own competitors than could be justified by logic or equity.

Moreover, the railroads at that time competing with intercoastal water transportation between the east and west coasts of this Nation made rates between those areas which were injurious to the inland producing and consuming regions.

Because the existence of transportation service at fair and nondiscriminatory charges reasonably related to those applying between other sections of the country was essential to the economic development of all regions of the Nation, the Congress of the United States was impelled to enact the original Act To Regulate Commerce. That development, with the promotion of commercial competition between the regions, makes the availability of nondiscriminatory transportation service even more essential today.

Bear in mind, please, that the Act To Regulate Commerce passed in 1887, prohibited unjust preference and prejudice in the matter of transportation rates and services in order to force the railroads to give service between the smaller and less desirable points equivalent to the service provided between the larger and more lucrative centers of commerce.

Under that act, however, the Commission could enforce that prohibition only when a railroad was a party to both the prejudicial and preferential rates. A railroad desiring to dominate a market with the traffic of its shippers was free to do so so long as it treated all of its own shippers substantially equally, regardless of the fact that its actions might constitute economic mayhem upon producing regions served by other railroads.

The Transportation Act of 1920 granted the Commission the minimum rate power because experience had shown that the regulatory authority could not promote and preserve good quality service without the power to prevent unrestrained rate competition and to require that the carriers charge enough to protect their ability to provide adequate service for all segments of the public. That is the essential obligation of all public utilities, and in the final analysis, carriers are public utilities.

The preservation of this system of equal service to both large and small and to different but competing regions depends entirely upon the continuation of effective regulation. H.R. 4700 runs completely counter to the central aim of not only transportation regulation but the expression of this principle in respect of all forms of utilities.

H.R. 4700 would permit the railroads to compete on what are said to be equal terms with unregulated water carriers and motor carriers in the transportation of those commodities which are basic to our national economy. Laying aside for the moment the question of whether or not this would be good for the railroads themselves, it is perfectly plain that it would be bad for the public.

The effect of depriving the Interstate Commerce Commission of minimum rate power over the transportation of these essential commodities will be to permit competition to run riot and thereby to disrupt the economic relationships of region to region and area to area

with repercussions far beyond the effect of competition upon the carriers which are themselves involved.

I would like to illustrate just how this will come about by reference to the rate structures and distribution patterns of three essential commodities which today move in bulk. They are grain, coal, and sugar.

I will deal first with grain because its transportation falls within both the agricultural and bulk commodity exemptions of the Interstate Commerce Act as it now reads. Prior to the advent of the motor truck, grain moved from the farms in wagons to the country elevator and by rail from there to the mill or other market. Today, when grain is loaded into trucks at the farms much of it goes directly thereby to the final market. And this is as it should be.

But it is not this movement from the farm which is advanvced by the railroads as justification for H.R. 4700. They refer to the other movements of grain from elevators to mills and from storage points to points of ultimate consumption. It is hard to see any reason why movements of that character, whether by motor carrier or by water vessel, should not be subjected to regulation. I personally know of no reason.

But by the same token, the existence of such unregulated transportation is certainly no reason why rail transportation should be exempted from minimum rate regulation. The railroad grain rate structure is an extremely complicated one. It has a tremendous effect upon the marketing of the grain produced in this Nation and upon the prices realized by the farmers who grow that grain. Moreover, there are literally millions of dollars invested in physical facilities for the processing and marketing of grain, which investments have been made in direct reliance upon a stable railroad rate structure. Let me give you an example.

The rates on grain from Ohio, Indiana, and Illinois, to the great markets of the East, both domestic and export, have been made on a pattern of origin and destination geographic groupings which give primary effect to distance. Some variance in the symmetry of that structure occurs because of the competitive water route by way of the Great Lakes and the old Erie Canal to the Hudson River.

But that competition has existed for many years and has not prevented the establishment of storage and milling facilities at many points in the general territory. To name only a few, there are mills at Toledo and Huron, Ohio, at Buffalo and Black Rock, N.Y., at Olean and Cayuga, N.Y., and at New Castle and York, Pa.

Those are only a few typical examples but each of those mills competes with the others in the processing and sale of grain and grain products in eastern markets. And this is done by means of a so-called transit arrangement under which the through rate from origin to ultimate destination applies with a stopoff at the milling point for processing of the grain into flour or feed.

Thereby, every grain mill and processing plant located between the grain-producing and grain-consuming territories is given a fair and equitable opportunity to compete in the market for the available business and the transportation charges have been deliberately designed and regulated for that purpose. Certainly that opportunity should be preserved for the future just as it has been for the past.

Can any reasonable man believe that this structure would exist very long if the Commission were deprived of its power to prevent the

railroads from cutting their rates to drive the water competition from the field? What would happen to the tremendous investments in milling facilities after many of them had been rendered noncompetitive in the market by reason of destructive railroad rate competition?

If the rails by the passage of H.R. 4700 are permitted to cut rates in any way they desire to attract traffic from the water carriers who serve the mills and consumers located on water, who is going to guarantee to the mills at New Castle and York, Pa., and other inland points that they will receive equal or relative treatment? I submit that no one shall have such right or power.

I will refer again in a subsequent portion of my testimony to the transportation of grain, but at this point I would like to discuss briefly the rail transportation of another bulk commodity, bituminous coal, a commodity important to the States of West Virginia, Pennsylvania, Kentucky, and Illinois, among others.

As some of the members of the committee undoubtedly know, bituminous coal has been one of the depressed industries of the country and the railroads are experimenting today with trainload rates in an effort to hold shrinking markets in competition with natural gas and residual fuel oil. Insofar as I have been able to ascertain, the Interstate Commerce Commission has not utilized its minimum rate power to interfere but has permitted such experimentation almost without exception.

The bituminous coal rate structure, like the grain rate structure, is characterized by origin and destination groupings and rates which are interrelated for the purpose of giving to each coal-producing area a reasonable opportunity to compete in a market that is reasonably within its reach.

In the *Ayrshire Collieries* case in 1949, the Supreme Court described the bituminous coal rate structure in simple and understandable term. (*Ayrshire Collieries Corp.* v. *United States*, 335 U.S. 573, Jan. 3, 1949). It said:

> But the Commission made plain that in considering the whole problem of rate relations presented by this case it did not rely strictly upon distance. Distance was a factor but it was not controlling. The Commission deemed its task to be the creation of a rate structure that would afford a fair opportunity to compete in the purchase, sale, and transportation of the coal from the various mines to the destination in question.

The Court itself posed the question of whether or not the Commission was entitled to give consideration to the element of competition between and among the producing mines in the determination of a just and reasonable rate structure. And the Court said:

> We think it was. Rate structures are not designed merely to favor the revenues of producers and carriers. The Commission has the consumer interest to safeguard as well. And when it undertakes to rationalize the interests of the three, great complexities are often encountered. The economics of the bituminous coal industry have baffled even experts. We would depart from our competence and our limited function in this field if we undertook to accommodate the factors of transportation conditions, distance, and competition differently than the Commission has done in this case. That is a task peculiarly for it. In fashioning what the Commission called a differentially related and finely balanced rate structure for this coal, there is no place for dogma or rigid formulas. The problem calls for an expert, informed judgment on a multitude of facts. The result is that the administrative ratemaker is left with broad discretion as long as no statutory requirement is overlooked. Yet that is, of course, precisely the nature of the administrative process in this field. * * *

The Interstate Commerce Commission would be utterly incapable of performing its function of accommodating "the factors of transportation conditions, distance, and competition" if it were deprived of the power to prescribe minimum rates. This is very aptly illustrated by the decision of the Supreme Court in the *Youngstown Sheet & Tube Co.* case in 1935, in which the Supreme Court sustained as proper an order by the Commission prescribing minimum rates for the specific purpose of preserving a rate structure which had been fixed by the Commission to permit competition between producing regions. (*Youngstown Sheet & Tube Co.* v. *United States*, 295 U.S. 475, May 20, 1935). The Supreme Court said:

> **The Commission finds: These prescribed minimums are reasonable: lower rates would create undue discrimination against shippers in origin districts who cannot use the water-rail route, and would tend to disrupt the rate structure, and to destroy the proper differentials between various producing districts on shipments to Ohio destinations. These findings have ample support in the evidence.**

The Court's decision goes on to answer categorically the contention made by proponents of H.R. 4700 that the Commission has ample powers under section 3 of the Interstate Commerce Act to require elimination of unjust preference or prejudice and thereby to assure that shippers will not be foreclosed by freight rates from a fair opportunity to compete in a reasonably accessible market.

If the Commission were deprived of its authority under section 15 to prescribe minimum reasonable rates, as this bill proposes, an order to eliminate discrimination which the Commission might issue under section 3 of the act would have to be in the alternative. That is to say, the Commission would be forced to leave to the railroads the choice between reducing the prejudicial rate or increasing the preferential rate. In *Youngstown Sheet & Tube*, the appellant urged that the failure of the Commission to accord such choice to the railroads rendered the Commission's order unlawful. The Court said:

> **There is no merit in the contention that the order was a section 3 order and invalid for failure to afford the carriers an alternative of raising the contested rate or lowering others to remove discrimination. It is true the Commission found prejudice to shippers all rail, but in essence the order entered was a section 15 order and not one made under section 3.**

There can be no doubt about it, the retention by the Interstate Commerce Commission of the power to prescribe minimum rates under section 15 is essential to the maintenance of a just and reasonable rate structure which, for the benefit of the public at large, makes possible the broadest type of competition between and among producers of any given commodity and, at the same time, affords to the consumers the widest possible source of supply. Indeed, the Commission relies very heavily upon its minimum rate powers to preserve that competition and carry out its responsibilities to eliminate preferences and prejudices.

I should here point out that the motor carriers are subjected to regulation when transporting bituminous coal and that the water carriers are exempted from such regulation only when coal is transported in vessels or tows with not more than two other bulk commodities. There may be some regular movements of coal by motor-truck in some areas over short distances, but, by and large, the motor carrier is not a significant factor in the distribution of bituminous coal.

Water carriage is a different matter. There is a large movement of bituminous coal over the Great Lakes and there is a large tidewater movement in coastwise operation. In both of these movements, however, there is invariably a prior movement by rail and sometimes a subsequent movement by rail. The Interstate Commerce Act applies to both and the Commission therefore does have the means of accommodating the factors of distance, transportation, and competitive conditions with respect to that traffic.

You will remember that I stated previously that the trucks do not transport much coal. Why then my interest in this traffic? I use it merely because it is an outstanding example to illustrate my point of equality and relativity of rates. If H.R. 4700 becomes law, how will a producer in the West Virginia fields be assured that his coal will move overland to a market at a rate relative or equivalent to a rate charged for overland transportation from the coalfields of Illinois? This problem becomes particularly acute and almost ludicrous when one railroad serves the West Virginia fields and another road serves the fields in Illinois.

At this juncture I would like to comment briefly about a third commodity which is transported largely in bulk. I refer to sugar. Here again there is a differentially related and finely balanced rate structure which has an intimate and vital effect upon the competitive opportunities of the producers and shippers. And these competitive opportunities are of tremendous significance not only to those producers but also to a substantial portion of the farmers of our country. Large quantities of sugarbeets are raised as a money crop in California, Colorado, Michigan, Nebraska, and throughout the central part of this Nation, and sugar is produced, refined, and shipped from those areas. Sugar is also produced and refined from sugarcane grown in Louisiana and Florida and is shipped from that general territory. Raw sugar from Hawaii, Puerto Rico, and the Virgin Islands also moves in substantial quantities to the port cities of the Nation at which points it is refined and shipped to inland markets. Included in such port cities are Houston, Tex., Savannah, Ga., and the northern Atlantic ports from Boston to Baltimore, inclusive.

The complexities of the rate structure upon which this sugar moves to market can readily be imagined, and it can just as readily be imagined what would happen to the structure if the Commission were deprived of its power to fix minimum rates.

I was personally impressed by the view taken of the proposed legislation by the traffic manager of the Savannah Sugar Refining Corp. of Savannah, Ga., in a speech delivered only this month before the Southeastern Association of Railroad and Utilities Commissioners. After pointing out the importance of the minimum rate power in the preservation of shipper and user competitive opportunities, that gentleman, Mr. Bates B. Bowers, endeavored to appraise the results if the power were withdrawn. He said:

> It is doubtful, to say the least, that adequate relief could be had under the antitrust laws for the situations with which we have been or are likely to be confronted. Moreover, until some case laws were established in respect of transportation ratemaking, we are apprehensive that we as shippers could be caught up in the whirlpool of competitive rate battles and sustain serious or even fatal injuries. In any event, despite any defects or weaknesses in the present ratemaking laws or of any criticisms of the way in which they are

administered, we still prefer to submit our rate problems to the expert body with 75 years of rate-regulating experience behind it. * * *

What is the basis of Mr. Bowers' concern? Isn't it a dreadful fear that without some effective control the railroads can destroy the importer of sugar and the sugar producer in Hawaii, Puerto Rico, and the Virgin Islands? If he fears this, shouldn't the American sugar farmer have equal fear about reduction of rates from the points of import without equal or relative reduction of rates for movement of the domestic crop? The ICC has heretofore controlled these situations so that equity results. Do we dare take this power away from them?

The members of the committee may well be asking themselves by now just why the motor carrier industry is so adamantly opposed to the proposed legislation when many segments of the industry are not directly involved in the commodities that would be subject to rate deregulation.

First, the motor carriers are fearful of all tendencies and all moves toward deregulation of transportation. There are many men in the motor carrier industry who still remember, as do I, the chaos which existed prior to the time that the motor carriers were brought under regulation. I certainly would not want to see those days return, and I know that the public interest demands that they not return.

The second reason is that the thinking men in the motor carrier industry—and I like to believe myself included in that category—are convinced that the proposed weakening of the Interstate Commerce Commission's control over freight rates would mark the beginning of highly competitive rate wars.

One of the basic reasons for the inclusion of authority over minimum rates in the Interstate Commerce Act was to prevent a needless depletion of carrier revenue in the heated environment of uncontrolled rate warfare. In the context of transportation economics there is universal agreement that in the absence of minimum rate control the carriers' rates will drop to an out-of-pocket cost basis in the mad struggle for traffic. The effect of this action on the carriers' financial condition is obvious, and no one likes to contemplate the ruthlessness of a period of competition between financially desperate competitors.

We have had considerable experience in recent years with the results of greater carrier freedom in making competitive rate reductions. Selective rate cut has followed selective rate cut, and this has occurred during a period of constantly rising costs. I am firmly convinced that the solution to the problems we do have in the transportation industry lies in the direction of firmer and more complete regulation—not less.

I testified substantially to that effect before the Senate Commerce Committee in 1961 during hearings upon S. 1197, a bill to amend the rule of ratemaking of section 15a(3) of the Interstate Commerce Act. I have always believed that adequate and satisfactory service to the public can be secured only under a regulatory philosophy which directs the competitive impulses of the carriers into the arena of service competition. Regulation should restrain the ill-advised effort of one carrier to gain a temporary advantage over another by cutting rates or charges. It must always be remembered that the Commission has the power to set maximum as well as minimum rates and historically has not hesitated to use it.

The things that are wrong with the economics of the transportation industry today stem from too much selective competition in pricing rather than insufficient freedom to engage in rate warfare. Carriers need more net revenue, not less. If legislative direction is to be applied, it needs to be applied in the direction of more responsive regulation, not the total elimination of that regulation. It is the fervant hope of the railroads that all minimum rate regulation will eventually be eliminated on all commodities. This is made clear by the testimony of Mr. Daniel P. Loomis at pages 214 and 222 of the hearings before this committee last year on H.R. 11583, which bill was very similar to that which we have before us today.

I would like to refresh your memories as to exactly what Mr. Loomis said.

Chairman Harris made the following statement and asked the following question and received the following answer:

The CHAIRMAN. Mr. Loomis, the proposal contained in H.R. 11583 is thought provoking, to rely upon the competitive forces rather than regulation, and then getting back to the antitrust laws for the protection of the carriers and shippers, and so forth. I mentioned that a while ago.

Now, if this proposition is sound under today's traditions, should not the exemption from minimum-rate regulation apply to all commodities instead of bulk and agricultural commodities?

Mr. LOOMIS. I think it should, Mr. Chairman. And we hope that experience under this proposed bill will make it sufficiently plain that all minimum rate regulations should be eliminated.

I should like to drop this quotation here, but you may be assured that I shall refer to it later.

We are being told that the proposed elimination of minimum rate control is necessary to aid the railroads in improving their net revenue position. Another witness will discuss the question of the rail financial status. I would like to discuss the fallacy in the concept that reduced rail rates on bulk and agricultural commodities will do what the rail carriers say they will do.

We hear a great deal these days about the propriety and indeed the advisability of fixing transportation rates with reference to computed out-of-pocket costs of providing the service. It is said that any rate which produces revenues in excess of out-of-pocket costs is beneficial to the carrier. This reasoning loses sight of the fact that carload freight is the only profitable traffic handled by the railroads today.

I have attached to this statement an exhibit which has been marked as exhibit A. I am sorry that these figures go back to the year 1960, but these are the last official statistics available. You will notice that these figures were compiled from official data made available through the ICC and the Department of the Army Corps of Engineers. I do not wish to go into any extensive analysis of rail costs, or operating figures or profits, but I believe it most pertinent to point out certain facts from this exhibit which will remain for your further analysis.

Incidentally, in connection with exhibit A, the chairman asked this morning about the commodities moving in bulk in the agricultural field. If you will notice, this exhibit lists those commodities and as to tonnages handled by railroads and trucks. When we refer to tonnages handled by trucks, we refer only to that tonnage handled by regulated carriers who are required to report to the Interstate Commerce Commission quarterly and annually. In addition to that, the Corps of Army Engineers were brought into this study to determine

the amount of these commodities which were handled by the barge-lines on the inland waterways. So we do have here the only figures that I know of which give us an indication as to how much tonnage is actually moving in these categories to which you referred this morning.

Again, I want to make it clear that I believe no one knows how many agricultural commodities are moving by the exempt itinerant truck, nor do I know or have I found anyone else who knows what price that itinerant man is charging for them. So we do have statistics in this field, a very, very definite loophole. I think the transportation census they have been talking about is designed to find out about the movement of this, and I believe no one knows. I have been able to discover no figures about it.

Someone asked this morning the out-of-pocket cost per ton of moving this traffic. You find this in this exhibit, whether or not they made any money on this traffic in 1960.

Please note further that the railroads made some money on the transportation of all commodities which they now seek to deregulate. When I say they made some money, I mean that these commodities made a contribution to the transportation burden which may be roughly defined as that expense of running a railroad over and above out-of-pocket costs. From all ICC reports and statistics, the railroads to make an actual profit must take in in excess of $1.39 for each dollar of out-of-pocket costs, the $1.39 being required to break even. If one will look at the last figure of column 5 of this exhibit, one will see that the total contribution to the railroads' transportation burden in 1960 for the hauling of all bulk and agricultural commodities was $608,698,000. So, even under regulation and with existing rate structures, these commodities should have produced 139 percent of $3,055,-063,000, or $4,246,454,000 for the railroads to break even. In 1960, therefore, in hauling this traffic they should have received $1,191,-450,000 above out-of-pocket costs to reach a break-even point. They actually received only $608,698,000, or roughly one-half of what they needed.

Now, do they purport to come here and say that they want to cut these rates?

The result of a 10-percent cut can be seen from columns 11, 12, and 13 of this exhibit. These columns show what would happen if the railroads hauled all of this traffic at 90 percent of the 1960 rate. Instead of a contribution to burden of about $609 million, the contribution to burden would be reduced to slightly over $81 million. Will somebody please explain to me who is going to make up this additional $510 million of loss? Certainly, it must come from other sources, which can only mean the shipping public.

The relative size of the individual railroad companies, as well as their financial structure, would in nearly all cases assure them of ultimate victory in any competitive rate contest. Despite their alleged poverty, the railroads have huge investments in land and other facilities which make them able to withstand long periods of low earnings, as history has shown. This position is bolstered by the relatively slow effect of operating losses on investment.

The third reason why motor carriers oppose H.R. 4700 is that they fear the corollary results of the disruptions of the normal channels of commerce in the agricultural and bulk commodities. As I've al-

ready indicated, there are large and expensive facilities which were built in reliance upon the mandate and promise of the Interstate Commerce Act that nonprejudicial and nonpreferential rates will be available for movement of articles of commerce to factory and to market. The destruction of the economic usefulness of these facilities and other installations by a laissez faire policy with respect to freight rates is certain to work great changes in the economic life of the affected regions. The terminals, the equipment, and the personnel of any motor carrier have all been fitted to the demands of the area in which that carrier operates. Any change in those demands has an immediate and direct impact upon the operation of the carrier, and the changes which will be worked by the proposed legislation could well be fatal in that regard.

You heard me say at the outset of this statement that I was fearful of this whole matter. I am not fearful for my own company, because we haul none of the traffic involved. You have heard me refer repeatedly to equality and relativity of rates which have been the backbone of the development of our whole country under an intelligently regulated transportation system. How can we assure anybody of rate equality or relativity in the absence of minimum rate controls?

Perhaps a few illustrations will drive this point home: Forty percent of the products of the State of Alabama consist of so-called field crops or agricultural commodities. Fifty-one percent of the products of Texas consist of these same commodities. It is 241 miles from Birmingham, Ala., to Mobile, the principal port for the export of Alabama cotton. It is 244 miles from Dallas to Houston, the great port of the State of Texas. In the absence of effective control, who is going to get the cotton crop of Texas from Dallas to Houston at the same price as is charged for moving cotton from Birmingham to Mobile? Speaking of agricultural commodities, 67 percent of the products of Arkansas are in this category. Cotton is one of the commodities. Little Rock is 416 miles from New Orleans, the port used by Arkansas producers. Who is going to be responsible for guaranteeing that the Arkansas cotton crop moves to New Orleans, 416 miles away, at a price that is relative to the movement of cotton 241 miles from Birmingham to Mobile, or 244 miles from Dallas to Houston?

The CHAIRMAN. Mr. Kipp, I think that would be a good place to suspend and give you a little opportunity to think that over between now and the morning. We are going to have to go to the floor of the House. I am sorry to interrupt you at this point, but it is just that way.

Mr. KIPP. I realize that, sir.

The CHAIRMAN. Will you be back in the morning at 10 o'clock?

Mr. KIPP. I shall stay over.

The CHAIRMAN. The committee will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 2:45 p.m. the committee recessed to reconvene at 10 a.m. Wednesday, May 1, 1963.)

TRANSPORTATION ACT—1963

WEDNESDAY, MAY 1, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

When the committee adjourned yesterday, Mr. Kipp was in the process of presenting his statement and, Mr. Kipp, I believe you had reached page 21 of your statement.

STATEMENT OF DONALD P. KIPP, PRESIDENT, KRAMER BROS. FREIGHT LINES, INC., DETROIT, MICH.—Resumed

Mr. KIPP. Yes, sir; that is true.

The CHAIRMAN. You may proceed with your statement. I am sorry we had the interruption, but that is part of the game.

Mr. KIPP. I understand, sir.

At the conclusion of my statement yesterday I had expressed my fear about the proposition of obtaining relativity and the illustration I closed with was the movement of cotton from the agricultural communities of Texas, and Mississippi, and Arkansas to their ports of export.

The CHAIRMAN. Yes, I think you had just reached the bottom of page 21.

Mr. KIPP. Yes, sir; that is true. I shall proceed.

Without regulation, will rates of this sort be relative? Who knows? I doubt it, especially if one railroad serves between two points, and another railroad serves between the other two. And suppose there is effective competition between two points and no competition between two other points. Does anyone speculate that there will be any reduction in rates where there is no competition?

I am convinced that this illustration applies with equal force on the movement of wheat from Fargo, N. Dak., to its market in Minneapolis, a distance of 236 miles, when we relate it to the movement of wheat from Omaha, Nebr., to Chicago, a distance of 472 miles.

This is brought very forcibly to my attention by something that has been handed me since I have been in Washington. I would like, if I may, to read to you from the Congressional Record of April 23, 1963. Senator Burdick of the State of North Dakota expressed the same

grave fear and seeks redress in connection with movement of grain from that State. He addressed the Senate as follows:

Mr. President, a serious maladjustment in freight rates for small grains exists in many areas of the Midwest. A thorough investigation is needed and corrective action should be taken.

I introduce, for appropriate reference, a joint resolution directing the Interstate Commerce Commission to make a full and complete investigation of the situation and to recommend remedial measures.

My State of North Dakota faces a particularly bad problem, because the costs of shipping grain to markets are disproportionately high, putting the State at a serious competitive disadvantage. Adjustments would benefit not only farmers but also shippers and common carriers.

Not since 1934 has the ICC made a comprehensive, general investigation of freight rates on grains in the West. It is time for a complete analysis of the situation to eliminate discriminatory rates.

The North Dakota State Legislature took cognizance of the problem in approving House Concurrent Resolution R–1. The joint resolution that I am introducing today is aimed at relieving an unfair situation not only for my State but for other areas in the Midwest, as well. I ask unanimous consent that the joint resolution be printed at this point in the Record.

The PRESIDING OFFICER. The joint resolution will be received and appropriately referred; and, without objection, the joint resolution will be printed in the Record.

The joint resolution, Senate Joint Resolution 70, to provide for an investigation by the Interstate Commerce Commission of railroad freight rates applicable to shipments of grain in carload lots from States in the Midwest region of the United States, introduced by Mr. Burdick, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the Record, as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Commission shall make a full and complete investigation and study of freight rates charged by carriers subject to part I of the Interstate Commerce Act for the shipment of grain in carload lots from the various States in the Midwest region of the United States, for the purpose of determining whether any such rates are discriminatory in any way. The Commission shall report the results of such investigation and study to the Congress as soon as practicable. Such report shall include a description of any action taken or proposed by the Commission to remove any discrimination determined to exist, and any amendments to the Interstate Commerce Act which the Commission recommends, as a result of such investigation and study."

I submit that if H.R. 4700 becomes law, Senator Burdick will have no redress.

I submit to you further that the illustrations I have posed to you apply to the movement of corn from Bloomington, Ill., to Chicago, a distance of 174 miles, in competition with the movement of corn from Des Moines, Iowa, to Chicago, a distance of 333 miles.

I could go on and on multiplying these illustrations as to livestock, citrus, truck garden products, and all of the produce of the farms.

Are we, as a nation, willing to place into the hands of one railroad or of the railroad industry itself or, for that matter, any other industry, the privilege of determining economic life or death for any one section of the agricultural community? I think not.

I would ask you to think, too, about arbitrary variations in rates which will occur between large and small shippers and between small communities and large metropolitan areas. It is almost unthinkable to me, and I believe I have great basis for fear.

And Mr. Dan Loomis says the railroads want to extend this same principle of all commodities. The railroads don't seek equality, they seek a license to hunt down their competitors, careless of the fact that

in the process they would do irreparable damage to the American public. I do not believe the Congress will permit it even if thinking of this sort has influenced the executive branch of our Government.

I believe, further, that the facts are not clearly understood in many circles. The President himself has some doubt because he suggested an alternative which might well be pursued.

Before closing, I want to comment briefly upon a case which is now pending before the Interstate Commerce Commission and which has received a good bit of notoriety. I refer to the case in which the Southern Railway has proposed rate reductions for the transportation of grain in 100-ton cars, familiarly called "Big Johns."

The proposal actually contemplates reductions of as much as 72 percent in the present rates and, as you can readily perceive, would bring about tremendous changes in the distribution pattern of grain in the Southeast.

Recently the Supreme Court of the United States was called upon to rule whether or not the Federal courts have jurisdiction to prevent the establishment of the "Big John" rates prior to a determination of their lawfulness by the Commission, the 7-month period during which the Commission might suspend them having expired.

The Court ruled that the matter was not within the area of judicial reach, but there was a sharp dissent by three of the Justices who felt that the factual situation, concerning which there was no dispute, demanded the exercise of the judicial process of restraint.

Because the proposed rate reductions in the "Big John" case are prophetic of what can be expected in other areas if the minimum rate power is withdrawn from the Commission insofar as agricultural and bulk commodities are concerned, I take the liberty of quoting from the dissenting opinion of the three Justices that portion which summarizes the detrimental results which can be expected from rate disruptions of the considered sort. Speaking for those three dissenters, Justice Clark said:

> The Court by its action today sounds the death knell to barge transportation on the Tennessee River. The war of extermination between the railroads and barge lines began years ago, and * * * has been effected by the railroads cutting rates where the barge competition existed to whatever extent was necessary to paralyze it, at the same time maintaining rates at a very high level elsewhere.

After noting that the drastic reductions in the present all-rail rate on multiple-car grain shipments while maintaining the higher rate on ex-barge traffic are but a continuation of such old rail policy, the facts were stated thusly:

> The new rate for the haul from St. Louis to Birmingham reduced from $8.70 per ton to a mere $3.12, is an example which illustrates the effect of the proposed rate reduction. Arrow's present rate for shipments between those points is $5.48 including expense to Arrow of $2.20 for the 71-mile rail leg from Guntersville, Ala., to Birmingham and 89 cents for transferring the grain from the barge to the rails at Guntersville, which leaves it only $2.39 for transportation by barge.
>
> In order to meet Southern's new rate Arrow would have to reduce by $2.36 its charge allocable to water travel, which would leave it exactly 3 cents per ton for that haul. I note further that the all-rail rate for the St. Louis-Birmingham haul is only 92 cents more than the charge of Arrow for the 71-mile Guntersville-Birmingham rail trip. The result of the effectuation of such drastic reductions is elementary—economic destruction of an important mode of transportation.

This factual situation speaks clearly for itself and demonstrates the type of rate warfare that exists even now in the presence of minimum rate regulation. Of course, the merits of that case are under current litigation before the Commission and will ultimately be resolved by that body under the law as it is now written. I should add that the suspension period has expired, and the Southern Railway indicates the above rates are being put into effect promptly.

Already there is a growing sequel to the situation I have just described. Many other competitive endeavors are being stimulated even within the rail carrier system itself by reason of the "Big John" rates. The Southern Railway and other railways in the South have filed additional grain rates with respect to single-car movements involving both the jumbo hopper cars as well as the lighter type of boxcar.

Now while the railroad advocations of the necessity for free managerial discretion are at their highest pitch, we find the Southern Railway urging the Commission to exercise its minimum-rate power to prevent the proposed reductions of the other rail carriers. Two weeks ago the New York Journal of Commerce reported the representations made to the Commission by the Southern as follows:

> The competitive effect on the Southern system, it claimed, would be to "thwart" the "research and ingenuity" of Southern's "technological achievement." If its competitors' reductions are permitted, Southern added, they would "generate an erosion, if not a breakdown, in the new and improved rate structure, of Southern, and a consequent sacrifice of the interest of the public."

Apparently the Southern Railway is enthusiastic about the elimination of the minimum-rate controls whenever the Southern wants to cut a rate to destroy a competitor, but it is not at all hesitant about asking the Commission to exercise that power with vigor when other railroads would cut rates to compete with the Southern. This anomaly is beyond my understanding.

In closing, gentlemen, I would like to leave you with this thought. I am not appearing here today to advocate that freight rates be maintained at artificially high levels nor for that matter the freezing of freight rates where they now stand, I am advocating the necessity of maintaining and assuring competition in the transportation industry for the benefit and protection of the public welfare, and I am advocating that the public interest and the principles of equality and relativity in ratemaking demand that the Commission retain its minimum rate powers.

Gentlemen, I thank you very much for letting me appear before you, and I particularly thank you for your kind attention.

(The information submitted follows:)

EXHIBIT A.—*Comparative traffic of surface common carriers potentially subject to proposed exemption from minimum rate regulation, 1960*

SUMMARY

[In thousands]

	Class I railroads						Class I intercity motor carriers		Waterborne	Potential rail traffic			
	Tons transported	Freight revenue			Contribution to burden	Out-of-pocket cost per ton	Tons transported	Freight revenue	Tons transported	Tons	Freight revenue	Out-of-pocket cost	Contribution to burden [1]
		Aggregate	Per ton										
			100 percent	90 percent									
A. Agricultural commodities which can move in bulk:													
1. Grain	86,040	$480,791	$5.59	$5.03	$190,873	$3.3696	799	$5,518	11,396	98,235	$494,122	$331,013	$163,109
2. Fibers	7,957	88,025	11.06	9.95	23,644	8.0911	831	10,604	31	8,819	87,749	71,355	16,394
B. Other exempt agricultural commodities:													
3. Fruits and vegetables	18,201	284,165	15.61	14.05	[2] 48,139	18.2574	1,973	28,060	2,995	23,169	325,524	423,006	[2] 97,482
A. and B. Total—agricultural	112,198	852,981			166,378		3,603	44,182	14,422	130,223	907,395	825,374	82,021
C. Other commodities which can be shipped in bulk:													
4. Oils and fats	3,166	39,938	12.61	11.35	4,623	11.1541	612	5,440	512	4,290	48,692	47,851	841
5. Sugar, sirup, and molasses	8,151	76,466	9.38	8.44	24,873	6.3297	1,087	9,077	3,559	12,797	108,007	81,001	27,006
6. Beverages	515	13,855	26.90	24.21	[2] 2,014	30.8155	119	1,745	371	1,005	24,331	30,970	[2] 6,639
7. Rough products of mines	287,785	666,611	2.32	2.09	59,212	2.1106	3,120	14,317	157,920	448,825	938,044	947,290	[2] 9,246
8. Coal and coke	331,732	1,063,016	3.20	2.88	91,015	2.9301	228	439	117,674	449,634	1,294,946	1,317,473	[2] 22,527
9. Petroleum and products	29,475	236,926	8.04	7.24	2,168	7.9646	70,152	212,254	277,990	377,617	2,733,947	3,007,568	[2] 273,621
9A. Gases other than petroleum	3,401	45,991	13.52	12.17	19,647	7.7460	592	4,507		3,993	48,595	30,930	17,665
10. Woodpulp	4,047	43,166	10.67	9.60	16,397	6.6145	29	379	633	4,709	45,206	31,148	14,058
11. Metals	2,362	10,089	4.27	3.84	4,465	2.3810	240	5,159		2,602	9,992	6,195	3,797
12. Chemicals	45,025	453,619	10.07	9.06	181,180	6.0508	10,348	123,277	16,356	71,729	649,865	434,018	215,847
13. Construction materials	31,592	117,617	3.72	3.35	35,158	2.6102	3,494	15,078	6,320	41,406	138,710	108,078	30,632
14. Waste	11,597	43,426	3.74	3.37	5,596	3.2620	292	4,234	1,412	13,301	44,824	43,388	1,436
Total	758,848	2,810,720			442,320		90,313	395,906	582,747	1,432,953	6,085,159	6,085,910	[2] 751
Total, bulk and exempt commodities	871,046	3,663,701			608,698		93,916	440,088	597,169	1,563,176	6,992,554	6,911,284	81,270

[1] At rail out-of-pocket cost per ton.
[2] Deficit (amount by which out-of-pocket costs exceed revenues).

Sources: Waterborne Commerce of the United States, calendar year 1960, areas of origin and destination of principal commodities, Department of Army Corps of Engineers. Class I Motor Carriers—Freight Commodity Statistics for the Year 1960, Statement No. 6114. Class I rail tons, revenue and contribution to burden from Distribution of the Rail Revenue Contribution by Commodity Groups, 1960, ICC cost finding section, Statement No. 2-62; out-of-pocket cost per ton computed from last-named statement.

The CHAIRMAN. Thank you, Mr. Kipp.

Mr. Williams, do you have any questions?

Mr. WILLIAMS. Mr. Chairman, I have no questions. I would simply like to state, Mr. Kipp, that I am sorry I did not have the opportunity of hearing your full statement, but I was very much impressed by the little bit that I did hear and I will certainly take this statement and study it very carefully.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman. You have quite a detailed statement here, but this, like the previous statement, seems to charge the ICC with failure to enforce minimum rates. If the ICC is not enforcing the minimum rates, what difference will it make whether they continue as they are now or if minimum rates are removed?

Mr. KIPP. I would urge, sir, that the real problem is to get the Interstate Commerce Commission to enforce its minimum rate powers. They have very infrequently prescribed minimum rates except when a competitive situation got to the point that it became absolutely necessary either for protection of the public in respect to equality and relatively, or for the very protection of the carriers themselves.

I should be most anxious to subscribe to the principles that the Interstate Commerce Commission should effectively use their minimum rate powers to preserve the economic health of carriers.

Mr. YOUNGER. You feel rather strongly now that they are not doing their duty?

Mr. KIPP. I will say yes.

Mr. YOUNGER. There is one point that bothers me and that is why the motor transportation people are not willing to say, "All right, we will agree that the minimum rates should be rescinded and that the rails be under exactly the same antitrust regulations under which the motor carriers operate, and that they be allowed to jointly agree on rates just the same as the motor carriers agree"? Why isn't that possible?

Mr. KIPP. I believe it is not possible from the motor carrier point of view. I speak now not representing any association, but I speak from my experience as president of a truckline. Here is what I feel, and I said before that I handle none of this traffic. This is no skin off my nose at all.

However, here is the avowed purpose of the railroads: To deregulate minimum charges on all traffic, and Mr. Loomis in an address delivered April 24, 1963, before the National Press Club in Washington had this to say:

> And the lower prices we charge, the greater volume we will attract. The jam up of big trucks operating on long hauls over the public highway will practically disappear. The trucks won't lose out on business. It will be redirected as trucks pick up the light load, short-haul traffic railroads lay down.

Exactly what is this principle they are exposing? Mr. Loomis wants to put me out of business as a long-haul trucker, and that is my forte. That is where we have made our living since 1922 in this business. His avowed purpose is to put me out of business. He says I am going to handle the traffic that is now being hauled by the short-haul railroads. Is he putting the short-haul railroads out of business, too? I don't get the fundamental behind this thing. I think it is a move to destroy competition on the part of the railroads.

Mr. YOUNGER. You are presupposing that something else will happen or that Congress will take action other than the action which is now embodied in H.R. 4700, and I doubt if we should be worried about something in the future. We are talking about H.R. 4700 and the features in H.R. 4700, not about something else or a fear of something else.

My point is what is wrong with equality of service on the part of the motor carriers, the rails, and the water carriers if they operate exactly on the same basis under the same antitrust rules?

Mr. KIPP. There is absolutely nothing wrong with equality. I favor equality, but I do not favor this method of purportedly getting it because as you establish equality between two competing modes of carriers here you destroy equality on the movement of traffic which is shipped by the American public.

There shall be no guarantee of equality of a rate between two competing areas in a common market. There will be nobody to guarantee it. We talk about equality between carriers. My approach to this matter is the development of equality between all segments of the shipping public, and the only way we have ever been able to do that is under the Commission's power to set, and regulate, and supervise the establishment of the rate structures on the movement of traffic in this country.

Mr. YOUNGER. Do you have ICC regulations now on the movement of the carriage of agricultural products and fishery products?

Mr. KIPP. If I transported them I would haul them as a regulated carrier under published tariffs. I need not necessarily do so.

Mr. YOUNGER. I say would you be under ICC regulation?

Mr. KIPP. Not in respect to the movement of that particular commodity.

Mr. YOUNGER. All right, and you do maintain equality?

Mr. KIPP. Yes.

Mr. YOUNGER. All right. Then, if you maintain equality without ICC regulation in the movement of these exempt products, why do you consider that the rails or that the water carriers won't do likewise?

Mr. KIPP. Because under this method of obtaining equality the American public cannot be protected.

Mr. YOUNGER. They are not protected now.

Mr. KIPP. Yes, sir; they are.

Mr. YOUNGER. Not with the motor carriers.

Mr. KIPP. There is great competition in the movement of these commodities now. Railroads tell us that 70 percent of their traffic is involved in these commodities. I do not know, as I said yesterday, how much of this exempt traffic is now moving by motortruck. Nobody knows that. But this becomes apparent to me. That the railroads have no intention of reducing rates on commodities they are now hauling.

If I am selling every suit I have on the rack, I am not going to reduce the price. The evident purpose of this legislation is to reduce rates to a point where they can attract the traffic that they are not now hauling.

In other words, it is a calculated scheme to destroy this itinerant trucker who is now hauling this traffic. I say they are not going to destroy me because I don't haul it, but it is quite obvious to me at least

that the railroads do not intend to reduce rates on the 70 percent of traffic they are now hauling.

Mr. YOUNGER. Isn't it true that the greatest percentage of increase in the movement of traffic is now in the independent carrier or private carrier?

Mr. KIPP. I have seen figures that offered a speculation to that effect. I believe that private carriage is growing apace. We talk about this agricultural exemption and how it affects the whole traffic picture. Yes, if you will remember, the railroads joined with the motor carrier industry a year ago last February and in testimony before the Senate committee on Senate bill 2560 they joined us in recommending that this agricultural exemption be rolled back.

I think it is an exceedingly dangerous thing, and you, sir, said yesterday you felt that that could not be done. I believe we have to go back in the history of this agricultural exemption. Its original purpose was to permit the farmer to move his goods to a primary market with no regulation whatever. To that I subscribe most wholeheartedly.

The agricultural exemption is being used today not for the movement of the goods from the farm to the primary market; it is being used for the transportation of agricultural products between food brokers.

The CHAIRMAN. Between what?

Mr. KIPP. Between food brokers, between wholesale houses, and it does not benefit the farmer in my opinion. As I said, the railroads joined with us in connection with testimony on S. 2560 and we recommended at that time that efforts be made to roll back this agricultural exemption to make it really apply to what it was originally intended for. We have not been successful in that.

Mr. YOUNGER. Do you believe that the biggest difficulty results in the backhaul?

Mr. KIPP. Yes, sir.

Mr. YOUNGER. Would you subscribe, then, to the theory that the motor carriers be prohibited from leasing trucks?

Mr. KIPP. To whom?

Mr. YOUNGER. Leasing at all. One of the biggest difficulties is that in order to get a backhaul these independent carriers without regulation carry an agricultural product, for instance, to Chicago and then they lease their truck to some regulated company for a cheap backhaul of some kind, and that is the big difficulty.

If they didn't get a backhaul of some kind, they wouldn't be so anxious to haul in the original instance. Would you agree to a regulation that would prevent a regulated motor carrier from leasing them?

Mr. KIPP. I certainly would, under those circumstances. I think that is one weakness in the Commission's order in Ex Parte MC 43. Second, the other problem, as I view it, in the agricultural exemption is this. We talk about the damage to common carriage in this country that is created by the private trucker. That private trucker who hauls his own commodity to his market can no more afford to run that truck back empty than I can afford to run it empty in one direction as a regulated carrier. How does he get it back in many instances? By hauling exempt agricultural commodities.

The converse is also true. The fellow who hauls agricultural commodities in one direction, as you say, may lease his truck to a regulated carrier, but he has other opportunities to get that truck back loaded. He will go out and gypsy a load, and you gentlemen know that I have been somewhat active in this illegal transportation picture and we have found in our investigations that that is happening in instances beyond your belief, sir, where the fellow hauls agricultural commodities in one direction and he does not lease his truck to a regulated carrier, but he goes out through people who are actually in the business of obtaining manufactured goods for that man to go back in the other direction in complete defiance of the law.

Mr. YOUNGER. The testimony I think before the committee shows that even manufacturers who with their trucks are delivering their own manufactured goods do the same thing on the return haul. They pick up a load of nonexempt products to deliver somewhere in order to make their backhaul.

Mr. KIPP. Yes, and many of the private carriers, if I may say so, sir, are hauling the goods of other people. I had a perfect illustration of that just a little while ago. I shall not mention names. I met a man, at my brother's funeral actually. I had never seen him before, and he said, "you know, I know you, Don. I talked to you over the phone about the movement of 10,000 pounds of traffic from Philadelphia to Detroit. I asked you what delivery you could give on it and you told me second morning," and I said, "Well apparently we performed the job for you because I didn't hear from you again. Did we do all right?"

"You know, we didn't move it by your freight line. We found a private truck," of a competitor, mind you, "in Philadelphia and they brought it in for us." That is happening, and we talk about the desperate straits in which the common carrier in the regulated industry, both rail and truck, are in. I believe they are not as desperate sometimes as pointed out except in certain sections of the country.

However, that is happening. How we go about eliminating that is a distinct problem to me and we in the trucking industry, even in cooperation with the railroads and the freight bureaus, are working very diligently toward the solution of this problem.

Mr. YOUNGER. One other question. You speak about the *Big John* case and Big John cars of the Southern. If, through innovation of new equipment, they can actually transport traffic or cargo cheaper than they could otherwise and that is an inherent advantage in this particular equipment, you see no reason why they shouldn't be able to lower their rates to their consumers, do you?

Mr. KIPP. Absolutely no reason, sir.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. Just one question, Mr. Chairman. Mr. Kipp, you said you knew of no instance where a store was selling all the clothes off the rack where they would reduce the price.

Mr. KIPP. Yes, sir.

Mr. FRIEDEL. One thing comes to my mind about coal. I think railroads ship a great percentage of all the coal.

Mr. KIPP. Yes, sir.

Mr. FRIEDEL. I read something recently where the railroads have come out with a new design on their cars and that they have reduced the rates on coal.

Mr. KIPP. Yes, sir.

Mr. FRIEDEL. Is that true?

Mr. KIPP. That is true, sir.

Mr. FRIEDEL. That is one instance that I think of. There may be others.

Mr. KIPP. May I explain this general situation on this coal rate thing?

Mr. FRIEDEL. Yes.

Mr. KIPP. The Baltimore and Ohio Railroad and the Pennsylvania Railroad are in the biggest scrap of their lives to obtain coal traffic. The Baltimore and Ohio, in order to take coal being moved by the Pennsylvania reduced the rate, so the Pennsylvania of necessity had to meet it or reduce the rate further.

That is the basis of the reduction in coal rates. One railroad tried to cut another's throat and railroad number one won't stand for it. That is a destructive rate war.

Mr. FRIEDEL. Destructive?

Mr. KIPP. Yes, sir.

Mr. FRIEDEL. I understand they have new designs and new equipment whereby they can haul it much cheaper. That was in the article I read, so the railroads reduced the prices for hauling coal.

Mr. KIPP. But the fact remains, sir, that both of these railroads that we are talking about that are cutting each other's throats are the same two railroads that are coming here to testify before you people as to poor mouths. They are losing money.

I don't know how much the B. & O. lost last year, but the year before last it seems to me they lost about $17 million. The Pennsylvania Railroad is losing money.

Mr. FRIEDEL. I don't want to go into that end of it. You are bringing out something now that just makes the story a little different, that there is competition amongst railroads.

Mr. KIPP. Indeed there is.

Mr. FRIEDEL. And you are trying to give the impression that they won't reduce the rates and that there won't be any competition among them; it would just be competition against the truckers, but I think it would be competition between the railroads, and truckers, and all. It would be fair competition and not discriminatory competition.

That is the only thing I want to bring out. Mr. Chairman, that is all I have to say now.

The CHAIRMAN. Mr. Brotzman.

Mr. BROTZMAN. One question. Mr. Kipp, in this *Big John* case, do I understand from your statement here that there was an attempt to restrain in the lower court that went up to the Supreme Court? Is this the way it came up?

Mr. KIPP. That is correct.

Mr. BROTZMAN. I haven't had an oportunity to read this case yet. I think I saw it and alluded to in the newspapers. A majority of the Court, I would understand, said the Federal courts had no jurisdiction to enjoin during this 7-month period. Is that correct?

Mr. KIPP. I believe it was "after" the 7-month period had expired.

Mr. BROTZMAN. Do you know what the name of that case was? I would like to get it and read it.

Mr. KIPP. I will certainly get it for you.

Mr. BROTZMAN. You can supply that to me later, if you will.

Mr. KIPP. I would be very glad to supply it. I think Mr. Carpenter has it.

Mr. BROTZMAN. I notice you discuss the dissent a great deal, which I assume is more in keeping with the point you would like to bring out here. What did the majority of the Court say in that decision?

Mr. KIPP. The majority of the Court said that they had no jurisdiction to extend the 7-month suspension period or to enter into a determination of the reasonableness or the justness of this rate at this stage of the proceeding. This was a matter entirely for the Interstate Commerce Commission under the Interstate Commerce Act.

Mr. BROTZMAN. What reason did they append to not taking jurisdiction? Certainly the Court can deal in the areas of Interstate Commerce. We know that. However, I was just wondering basically why the majority of the Supreme Court of the United States said they could not take jurisdiction.

Mr. KIPP. In the opinion, and I have it here now and will be glad to give you the citation, the majority said:

> The Interstate Commerce Commission was granted no power to suspend proposed rates in the original act of 1887. The power first appeared in 1910.

That is preliminary.

> We believe that Congress would not have given such detailed consideration to the period of suspension unless it meant it will be to vest in the Commission the sole and exclusive power to suspend and to withdraw from the judiciary any preexisting power to grant injunctive relief.

I think that is the basis of the majority opinion.

Mr. BROTZMAN. So the present posture of the case is that it was not restrained and that case presently is before the ICC for determination?

Mr. KIPP. That is right.

Mr. BROTZMAN. I have no further questions, Mr. Chairman.

Mr. KIPP. In that case, sir, if you would like the official title, it is *Arrow Transportation, et al.* v. *Southern Railway Company, et al.*

Mr. HEMPHILL. Would you yield to me at that point before we get off that?

Mr. BROTZMAN. I yield to the gentleman.

Mr. HEMPHILL. Maybe I misunderstand the opinion, but I understand the opinion to say that the Congress had delegated rate making and the question of reasonableness to the ICC.

Mr. KIPP. That is correct, at least until the administrative process before the Commission has been completed.

Mr. HEMPHILL. And it was not for the courts to get into the ratemaking business.

Mr. KIPP. That is right.

Mr. HEMPHILL. And the dissent, as I understand it, said that the courts should give the relief where the administrative agency performed in an unreasonable or unsatisfactory manner. Is that right?

Mr. KIPP. I believe that is true at this stage, yes, sir.

Mr. HEMPHILL. So what we are saying here today and the question today actually is whether or not the ICC shall have the ratemaking

power on railroads and the truckers have the ratemaking power on themselves insofar as agricultural and other commodities are concerned. Am I correct in that?

Mr. KIPP. When you speak of truckers you use a very large term. I am a regulated carrier. I publish rates on the movement of agricultural commodities. Where I would move them I would move them under published tariff rates. There are a great number of trucks who are not subject to regulation by the ICC except for safety. I don't know what rates they charge. I don't know what hat they pick them from. I don't like these people any better than you do, believe me, as a regulated trucker I don't, because they take business that would otherwise be available to me.

My whole point is that the approach to this matter is not in my opinion the enactment of legislation like H.R. 4700. I believe it will not solve it, but will compound the problem of equality from the point of view of the shipping public and even the agricultural community itself.

Mr. HEMPHILL. Thank you. I am sorry I took so much of your time.

Mr. BROTZMAN. That is all.

The CHAIRMAN. You are an exempted carrier from agricultural hauling, aren't you?

Mr. KIPP. Yes, sir.

The CHAIRMAN. And yet you publish your tariff?

Mr. KIPP. Yes, we do.

The CHAIRMAN. Why do you do that?

Mr. KIPP. Because we are parties to the tariff-publishing agencies; so we publish a rate on the movement of these commodities which I know to be a lot higher than the rates at which they are moving by the exempt trucker. I can't afford to haul these commodities at the rates they are now moving. I can't as a regulated trucker afford to haul them. I am sure of it. Very rarely are they tendered to me. If you would refer to the exhibit which I attached you will find how little of this traffic actually moves by the regulated trucking industry. In some sections of the country it does move somewhat.

I understand in the Far West many of the regulated carriers are transporting a considerable quantity of this traffic, but by and large one will know from exhibit A attached to my statement that only 799,000 tons of grain move by regulated truck. How much of it moved by the unregulated fellow, I do not know; 831,000 tons of fibers; fruits and vegetables only 1,973,000 tons, as compared with 18,201,000 moved by the regulated railroads; so this traffic just does not attract itself to the fellow who is out in the business of common carriage and trying to serve the public at large.

It is handled by a bunch of itinerant fellows who are running all over the country. I think that they do in a sense meet the demands of agriculture because they are free to go where they will, when they will, when the crop matures, and I think in that sense they do meet some agricultural need.

But I do believe further that grave consideration should be given to the rollback of this exemption to the point where it was originally intended to benefit the farmer himself.

The CHAIRMAN. Mr. Kipp, and I hope you will pardon me, Mr. O'Brien you have just raised the problem which I think motivated Mr. Younger yesterday. You haul very little agricultural products.

Mr. KIPP. Correct.

The CHAIRMAN. The reason you haul very little agricultural products is that you cannot haul them at the rate that they are being transported generally.

Mr. KIPP. That is true.

The CHAIRMAN. If the agricultural people are required to use common carriage, then their rates have to be higher?

Mr. KIPP. I don't know really the answer to that because I do not know the rate under which these products are being moved nor do I know the quantity that is being moved by the exempt truck men. One would have to make a very detailed study.

The CHAIRMAN. I am sorry. I perhaps misunderstood you. I thought that you made the statement that you simply could not afford to haul agricultural products at the prices that they are being transported.

Mr. KIPP. I cannot under the present circumstances. If they became fully regulated, and I had available to me for transportation a sufficient quantity of these products and I had a balanced move on their transportation, I don't know at what rate I could transport them.

The CHAIRMAN. The truth about it is the bulk agricultural product just does not lend itself to haul by motor carrier, does it?

Mr. KIPP. I beg your pardon, sir?

The CHAIRMAN. The agricultural bulk haul; that is, in large volume, does not lend itself to motor transportation primarily, does it?

Mr. KIPP. If you are speaking of grains and that sort of thing, by and large that is true. However, I believe that most of the citrus crop out of the State of Florida is moved by motor carrier.

The CHAIRMAN. Yes; you get into fresh fruits and vegetables and things of that kind, but I am talking about the bulk haul, such as cotton, and grain, and things of that kind.

Mr. KIPP. That is true.

The CHAIRMAN. You just simply could not because the inherent advantage goes to the barges and the railroads.

Mr. KIPP. I think that is true, sir.

The CHAIRMAN. Mr. O'Brien.

Mr. O'BRIEN. No questions, Mr. Chairman.

Mr. WILLIAMS. May I ask one question at this point?

The CHAIRMAN. Yes.

Mr. WILLIAMS. Mr. Kipp, you said that you can't haul these and come out at the present prices, but if everything should be put under regulation it might be possible for you to. Did I understand you correctly?

Mr. KIPP. Yes, sir; it might.

Mr. WILLIAMS. Am I to assume that you are saying that under regulation these rates would be increased to permit you to carry this triffic and still come out?

Mr. KIPP. That I could not state with any definite knowledge.

Mr. WILLIAMS. What other circumstance could regulation bring about that could permit you to carry them at a profit?

Mr. KIPP. I would have to make a detailed study of the volume of this traffic moving, between what points it was moving, whether or not you would have balanced loads, and a number of factors that one must consider in establishing any rate level in our business or any other common carrier business.

Mr. WILLIAMS. I presume that your problem is not in rates then. I take it from what you have said it is not the rate situation that keeps you from moving this traffic. That is what we are concerned with in this hearing.

Mr. KIPP. I cannot honestly answer that question without having greater knowledge about the amount of traffic, the places between which it is moving, the zonal flow of traffic, and all of that sort of thing which is necessary for me to determine my cost in transporting this traffic.

Mr. WILLIAMS. All right. Once you have that information, it doesn't matter too much whether you are regulated or not, does it, in making that determination?

Mr. KIPP. No, sir.

Mr. WILLIAMS. The point of my question is this: You say with regulation possibly you might be able to carry it; without regulation you can't.

Mr. KIPP. That is right.

Mr. WILLIAMS. Doesn't it follow naturally that you are presuming that regulation would raise the rates? Isn't that the only conclusion that can be drawn?

Mr. KIPP. I don't know enough about this traffic. As I say again, these rates are predicated upon many cost factors. My over-the-road cost, for example, is a great deal higher than the prices charged per mile—I have a feeling—for moving this traffic today, because it is moved by the itinerant trucker who doesn't have his fixed overhead cost that I have in serving the public.

If all of this traffic should become available to the regulated carriers, I have no way of determining or telling you honestly whether or not it would raise the price of moving these agricultural products.

Mr. WILLIAMS. Of course, your costs per mile are fixed.

Mr. KIPP. I beg your pardon?

Mr. WILLIAMS. I say your costs per mile are fixed.

Mr. KIPP. In our business they vary.

Mr. WILLIAMS. They don't vary without regulation.

Mr. KIPP. No, sir; that is true.

Mr. WILLIAMS. In other words, regulation is not an element of the cost.

Mr. KIPP. That is true.

Mr. WILLIAMS. So that gets us back to this question of what is your presumption, with respect to regulation, as to why you might possibly be able to carry these products in a regulated economy but not in an unregulated economy?

Mr. KIPP. As I said, again, if they were regulated, and this volume of traffic—I know not what it is—if this volume of traffic became available to regulated carriers, I don't know what our cost factors would show, frankly. The great majority of it moves in truckload. Naturally, when we are operating the common carrier business as we are, we must in some manner allocate general overhead as between l.c.l. traffic and truckload traffic.

If this great bulk of agricultural commodities became available to the motor common carrier as truckload movement, I do not know what the rate level would be—whether it would be higher, or whether it would be lower, than the itinerant trucker charges.

Mr. WILLIAMS. I assume that the fact of regulation would make it available to motor carriers.

Mr. KIPP. Yes, sir; it would.

Mr. WILLIAMS. And the reason it is not available now is because you are not competitive; is that right? As to rates?

Mr. KIPP. I assume that would be true, yes sir.

Mr. WILLIAMS. With regulation, are we to assume that you can compete, because rail rates will be lifted to permit you to compete?

Mr. KIPP. I don't know whether they would be lifted or whether they would be reduced. That would depend upon very definite traffic studies as to the movement of this traffic, when it moves, between what points it moves, the availability of backhaul, and all these factors that I cannot even speculate about.

Mr. WILLIAMS. Thank you.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. No questions.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. Thank, Mr. Chairman. I am very much concerned with this business of illegal backhauls, and what the Commission is doing to prevent it. You have given us some idea of the impact of it on the industry, but would you say that there is a substantial amount of this illegal backhauling?

Mr. KIPP. I have stated in various public utterances that, from my studies, this backhaul—this illegal traffic in this country—may amount to as much as $5 billion a year in freight revenue. The National Association of Transportation specialists have, over the past 3 years put up road blocks in various States. I think they started out in 1960, with 18 States. In 1961, they extended it to 22 States. I think, in 1962, it encompassed a survey of traffic moving through 25 States of this Nation, and they found this to be true: That, of all the unregulated trucks moving over the highways of this country, 25 percent of them were moving illegally.

The only authoritative survey that I have seen yet—which purports to be authoritative, at least—is a report in Dun's Review of June 1, 1961, in which Dun's Review estimated that the unregulated traffic in this country amounted to $12 billion a year.

You remember testimony yesterday to the effect that the regulated railroads, and the regulated trucks, moved only $17 billion of traffic in 1962. If Dun's are anywhere near right, that there is $12 billion of this traffic moving over the highways annually in unregulated transportation and if the National Association of Transportation specialists are right in their surveys that 25 percent of all unregulated trucks are operating illegally, on that figure alone you come up with $3 billion of illegal traffic being moved each year. Nobody has made any accurate surveys of this problem. All we can do is speculate about it.

Mr. DINGELL. What is the ICC doing to halt it?

Mr. KIPP. The ICC has, I believe, some 150 enforcement personnel to operate in 48 States. The ICC has brought more prosecutions on illegal trucking in the last 2 years than, I believe, they have done in the previous 10 years put together. They simply do not have the force

of people necessary to arrest this guy right at the moment. That is the only way you can ever catch him, and I have been urging all over the country that the States themselves should take some action in connection with this problem.

Senator Smathers, when he introduced Senate bill 2560 a year ago last January was exceedingly concerned about it, and he made certain proposals in that bill, which, incidentally, didn't get off the ground. He made certain proposals in that bill, as to cooperation between the Federal Government and the States, to make a definite approach toward the elimination of this problem, and to giving the regulated transportation industry of this country a transfusion, which it very badly needs.

Mr. DINGELL. Aside from additional enforcement personnel for the ICC, is there anything that can be done to help stamp out this illegal carriage? Would a change in the statutory authority of the ICC—perhaps more harsh penalties by the ICC; perhaps allowing the ICC to remove these people from the highways for a period of 6 months, or a year, perhaps permanent—help? Will these things outlaw this illegal carriage to which you allude?

Mr. KIPP. Congressman, did you mention withdrawing permits? These people are not permitted by ICC.

Mr. DINGELL. I say removing them from the road for a period of 6 months, or a year, or indefinitely—where they violate the rules of the road.

Mr. KIPP. I would like to remove them from the road permanently, but this is not a simple problem. Its complexities are great. On the one hand, we say that, to haul agricultural products which are now exempt by truck, anybody can haul them; that exemption was not put into the original Motor Carrier Act of 1935 at the insistence of the motor carriers. It was put in there at the insistence of the agricultural community; so, you had a great volume of unregulated trucks operating legally over this highway, and they immediately became exposed to transporting traffic illegally in the opposite direction.

I don't know how you would say that a private carrier, for example, must keep his trucks off the highway for 6 months. This private carrier has a right to haul these goods in one direction. The problem is preventing him from hauling someone else's goods illegally in the opposite direction.

In my opinion, the only way you do that—and I have so stated repeatedly—is to set up some effective enforcement machinery at the State level. A great many States, as we all know, have weigh stations. They weigh the truck. They inspect it for safety, regardless of whether it is a private truck, exempt truck, regulated truck, or what it may be; but, in many States, they have no right to determine what lading that truck is carrying. We have been working very diligently, and I thought that Senator Smathers certainly took a step in the right direction when he recommended that the Federal Government and the State regulatory agencies enter into a joint program, whereby this illegal transportation might be eliminated at the State level.

Under the present procedures of enforcement under our Interstate Commerce Act—the motor carrier section—the only way that you can prosecute a man for violation of the law is to go to the Federal district attorney and ask that district attorney to issue an information against that gentleman, or to ask a Federal grand jury to issue an indictment.

The Federal marshal must go out and arrest him. He must be hauled before a Federal district judge. A plea must be entered, and the Federal district judge can then fine him for violation of the law. Where we have this situation occurring daily, it seems to me that the only way that you will ever eliminate this man is to arrest him on the spot, haul him before the closest justice of the peace, and fine him just as if he were violating a traffic law.

That, in my opinion, from my studies of this illegal transportation situation, is the only way that we can do it.

Mr. DINGELL. Is injunctive relief available to the ICC?

Mr. KIPP. Injunctive relief is available on the motion or at the instigation of the ICC. Injunctive relief is not available to me as a carrier against this fellow violating the law. That is another thing that S. 2560 would have accomplished. It would have given me a right as a regulated carrier to go into Federal court and seek injunctive relief against this law violator. Such is not available to us now.

Mr. DINGELL. What about other forms of carriage? There is contract carriage. There is also, I guess, a form of bailment that is practiced to evade regulation and there is also the instance where the individual owns in fact, or at least in theory, sometimes just for the purposes of the trip alone, title to the goods that he carries. Is this a problem in your industry?

Mr. KIPP. Yes, sir. It is a very definite problem. You have many types of violations of the law in connection with illegal trucking. What you referred to was where the itinerant man goes out and purports to have title to a cargo and transports it as if it were his cargo and takes it to destination and sells it.

You have another situation where a man will own a truck. The Commission has ruled repeatedly that to lease a truck with driver to a shipper is an unlawful transportation situation. We have truck-leasing companies that will lease to a shipper a truck from one company and they will supply a driver from a related company—all unlawful.

Variations in this illegal trucking are just multitudinous. On our own behalf our industry has had over the past 2½ years as many as four private investigators working on this problem in many sections of the country. We only have two now because we ran a little short of funds, but we are doing everything in our power to try to ferret this problem out.

Mr. DINGELL. What is the ICC doing about this problem and what could be done to change the law to strengthen the hands of the ICC to cope with this matter?

Mr. KIPP. The ICC are working with great diligence and I will say that they have cooperated with us to the fullest possible extent. The only way that the ICC, in my opinion, can be made more effective is for the Congress to grant them some more funds so that they can hire more people to assist them in the enforcement of the law that they are charged with administering.

Mr. DINGELL. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Hemphill.

Mr. HEMPHILL. Yes. Are we supposed to get the impression from your testimony that the transportation business in this country is, should we say, short of cutthroat?

Mr. KIPP. Competition is keen.

Mr. HEMPHILL. Mr. Dingell had asked about the traffic which, as I understand it, is really illegal.

Mr. KIPP. That is correct.

Mr. HEMPHILL. You said in answer to his question as to what should be done about it that a man should be caught on the spot and hauled before a justice of the peace. That is almost impossible unless you had some universal transportation act which all of the States adopted because, as I understand it, when you cross a State line for interstate commerce purposes only the Federal courts have jurisdiction.

Mr. KIPP. I believe that to be untrue, sir; for example, the State of Arkansas has a very effective law. What they do in the State of Arkansas is make every carrier register with that State and file his authority. It has been said this is not an unreasonable burden upon interstate commerce. They require all carriers going through the State of Arkansas to register their authority.

Mr. HEMPHILL. With the public service commission of that State?

Mr. KIPP. With the public service commission of the State of Arkansas. Kentucky is another State which very effectively does it. Michigan is another one which very effectively does it. Illegal trucking doesn't go through the State of Arkansas, sir; they skirt it.

The CHAIRMAN. What was that?

Mr. KIPP. I say illegal trucking doesn't go through the State of Arkansas. I had forgotten for a moment that you were from Arkansas, Mr. Chairman, but I certainly would like to compliment those people down there in that public utility commission of theirs, Mr. Maurice Buttram, for having done a terrific job in the State of Arkansas in stamping this out. He has done it and other States could do it, if we can get some effective mechanism set up so that we do leave a certain amount of uniformity in State laws and have proper enforcement personnel to see that those laws are observed.

Mr. HEMPHILL. I don't think I am getting through to you and you are not getting through to me on that, so we will just go to something else. I don't think you understand my question.

Mr. KIPP. I didn't if I did not answer it.

Mr. HEMPHILL. I will pursue it with counsel.

The CHAIRMAN. I hope the gentleman from South Carolina will permit me to say that I trust he does not take exception to what he said about Arkansas.

Mr. HEMPHILL. No, sir, Mr. Chairman; I have such respect for my chairman and his State that I would not take exception.

Would you support H.R. 4700 if all commodities are free of minimum-rate regulation, but at the same time all carriers subject to the same antitrust laws?

Mr. KIPP. I believe that by and large the procedures under the antitrust laws are simply too slow and too cumbersome for effective regulation. How do we enforce the antitrust laws? Well, through the Department of Justice, I guess, by formal complaint for their violation. Those cases are cases which are tried in Federal court after having been pending, many of them, for literally years. We cannot in my opinion have effective competition in the transportation business by waiting for the Department of Justice to prosecute an antitrust case.

I think we must have available to us the opportunity to file a complaint or a petition with the Interstate Commerce Commission in

order to referee this matter, so I believe the antitrust laws are not the answer to this problem, sir.

Mr. HEMPHILL. There is one more area I would like to explore. As I understand it, now, if a rail carrier wants to carry agricultural commodities it is supposed to make application for a rate or a tariff. Isn't that right?

Mr. KIPP. To carry agricultural commodities?

Mr. HEMPHILL. That is right.

Mr. KIPP. Yes, sir; he publishes a tariff.

Mr. HEMPHILL. He publishes a tariff. If a trucker wants to carry agricultural commodities, he is not required to publish any tariff under the law, is he?

Mr. KIPP. That is true.

Mr. HEMPHILL. As a matter of fact, the truckers are allowed to get together on the tariff they will charge on agricultural commodities in a certain area, aren't they?

Mr. KIPP. The regulated carriers through their proper tariff procedures and under the exemption from antitrust as provided in section 5a of the act, the Reed-Bulwinkle amendment may act in concert to set rates; yes, sir.

Mr. HEMPHILL. As I understand the law, since the truckers are exempt, that is not under the ICC in any way, is it?

Mr. KIPP. Not at the present time except only from the standpoint of safety and except regulated carriers using the tariff procedures I just mentioned.

Mr. HEMPHILL. And that also applies to the bargelines. They are not under ICC for exempt commodities, are they?

Mr. KIPP. Not on exempt commodities, but they are under ICC on nonexempt commodities.

Mr. HEMPHILL. I am talking about exempt commodities because that is all we are talking about in this bill.

Mr. KIPP. And bulk commodities.

Mr. HEMPHILL. Bulk commodities, that is correct. If H.R. 4700 is enacted the railroads will have the same privilege of publishing their own tariffs that the truckers and the barges now have on those commodities.

Mr. KIPP. That is true.

Mr. HEMPHILL. That is what this is all about. I also understand that if the railroads publish a tariff on some commodity in bulk, as long as that rate is within the maximum and minimum limitations which the Interstate Commerce Commission has fixed, the Interstate Commerce Commission can't bother them within those limitations, isn't that right, because having determined that that is reasonable they have no control over the fluctuation, do they?

Mr. KIPP. Well, reasonableness is one test certainly. Compensatory nature of the rate is another.

Mr. HEMPHILL. Plus the fact, as I understand it today, the ICC has a right to suspend.

Mr. KIPP. Yes, sir.

Mr. HEMPHILL. And this Supreme Court decision says that if ICC exercises that right to suspend, the Federal courts do not have the jurisdiction to interfere with that suspension.

Mr. KIPP. The Commission and the courts may not suspend beyond the 7-month period.

Mr. YOUNGER. Will the gentleman yield for just one question there.

Mr. HEMPHILL. I will be happy to; yes, sir.

Mr. YOUNGER. Is it not true that under H.R. 4700, even though the minimum rates were rescinded, the rails would still have to publish their rates?

Mr. KIPP. That is true, Mr. Younger, yes. I think I misspoke on that.

Mr. YOUNGER. They are required to publish their rates.

Mr. KIPP. Publishing the rates won't be of any consequence so far as enforcement is concerned if the ICC had no right to enforce the minimum and maximum rates.

Mr. YOUNGER. They are available to the public.

Mr. KIPP. Yes, of course they are.

Mr. HEMPHILL. Did I understand from your discussion of this case in your testimony that you felt there was a gray area here, that the Congress should now go back into an amendment, perhaps this Elkins-Cummings Act, which I think was the last one, wasn't it, or take some action because the Court has made this decision?

Was that the tenor of your testimony?

Mr. KIPP. No, it was not. I used that as an illustration merely to point out that there lies within the power of the railroad industry, even under regulation, the power apparently to destroy the competing mode of transportation, and I think that Arrow Barge Lines is out of business in respect to the movement of this traffic.

That is happening even under regulation. I don't know what the Commission will ultimately do with that case. We shall have to wait and see. All that case says is that the Federal court is not empowered to extend the suspension period by injunctive process so as to aid this man who apparently is going out of business.

Mr. HEMPHILL. Because under the Constitution the Congress has been given the power over the Commerce which it has delegated to the ICC.

Mr. KIPP. That is correct.

Mr. HEMPHILL. I believe you said in your testimony a while ago, if I heard you correctly, that ICC had very infrequently enforced its authority in the area of minimum rates on bulk agricultural commodities. Did you say that or did I not hear you correctly?

Mr. KIPP. I believe I didn't limit it to those specific commodities. I recall few instances where the ICC has exercised its minimum rate power.

Mr. HEMPHILL. But you said they were infrequent, I believe.

Mr. KIPP. Yes, infrequent.

Mr. HEMPHILL. You used the word "infrequent."

Mr. KIPP. That is correct.

Mr. HEMPHILL. But do you think the ICC has done a good job in that area?

Mr. KIPP. I think they should exercise their minimum rate powers more frequently to prevent destructive competition.

Mr. HEMPHILL. Of course the regulations are designed, I suppose, to keep the railroads honest. Isn't that right? I am not saying that they were dishonest, but it was designed to keep them honest.

Mr. KIPP. I think so, yes, partially.

Mr. HEMPHILL. And it follows as the night follows the day, if your reason be correct, that the fact that you have all the bird-dogging, as

we call it, that is, the illegal trucking, is because there is insufficient regulation and insufficient enforcement?

Mr. KIPP. That is true.

Mr. HEMPHILL. If we were to pass H.R. 4700 and change it to include all commodities as exempt commodities to all carriers and if we were to put the jurisdiction under the Justice Department and under the antitrust laws of this country, doesn't it also follow that these people who are in illegal operations couldn't afford but one antitrust suit, as expensive as it is? You would actually be building into the law a deterrent that we would hope that the antitrust laws have, wouldn't you?

Mr. KIPP. I don't understand that H.R. 4700 purports to regulate anybody. It doesn't purport to take away the agricultural exemption from anybody. The principal thing it purports to do is permit the railroads to reduce rates in any manner they might desire without any deterrent from the Interstate Commerce Commission to interfere and try to correct competitive situations, not only among the modes of carriers, but among the various areas of the country. That is all I understand that it purports to do.

Mr. HEMPHILL. Don't you understand it to purport to give the railroads the same freedom from regulation that the trucks have in certain areas?

Mr. KIPP. Yes, I do.

Mr. HEMPHILL. If that is the impact of it, do the truckers now have an advantage over the railroads in not being regulated?

Mr. KIPP. The itinerant wildcat trucker has such an advantage.

Mr. HEMPHILL. You say the regulated truckers do not?

Mr. KIPP. That is correct.

Mr. HEMPHILL. Thank you very much. I am sorry I took so much time, Mr. Chairman.

The CHAIRMAN. The exempt operators do.

Mr. KIPP. Yes. Whether it is an advantage or not I don't know. It is certainly a difference in regulatory statutes.

The CHAIRMAN. Mr. Rostenkowski?

Mr. ROSTENKOWSKI. I have no questions.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Yes, Mr. Chairman, one or two. Thank you, sir, Mr. Kipp, in the absence of minimum rate regulations on the railroads or if H.R. 4700 were law and the railroad sets a certain tariff in the exempted area and then later decides that it is too low, would it be necessary for the railroad to go before the ICC to have that rate increased?

Mr. KIPP. No, sir; they could publish a tariff increasing it, and that of course would be subject to complaint and possible suspension by a person affected by the increased rate.

Mr. KORNEGAY. That is what I want to learn from you, what is the procedure in raising the rate in the absence of minimum rate regulations.

Mr. KIPP. One publishes a tariff and publishes a rate. Anyone affected by that increased rate may under the present situation file a protest with the Interstate Commerce Commission. The rate might be protested as being unreasonably high, as discriminatory, prejudicial, preferential, and then it goes before the Suspension Board of

the Commission and the Suspension Board will either permit the rate to become effective after due proof or will suspend it.

Mr. KORNEGAY. In other words, the procedures in raising rates would be the same if H.R. 4700 were enacted into law as they are now; is that correct?

Mr. KIPP. Well, H.R. 4700, as you know, makes applicable to the railroads certain provisions of the antitrust laws. That means to me that they cannot get together to fix a price. I believe what you say to be true if one railroad were to do it, but if railroads were to do it in concert I believe that they would run into trouble of violation of the antitrust laws.

Mr. KORNEGAY. I am thinking in terms of one railroad. Do you feel that that in itself; that is, the raising of the rate and procedures necessary or incident to it, would be a deterrent in settling unreasonably low rates or noncompensatory rates by the railroads?

Mr. KIPP. I think that this is what would happen actually under H.R. 4700. Rails are going in and they are going to reduce their rates to attract the traffic and they are going to eliminate their competition.

Mr. KORNEGAY. Then they will want to raise them.

Mr. KIPP. You bet. As soon as the competition is eliminated they will put their rates back up again.

Mr. KORNEGAY. I was assuming, following your theory of the matter—but then they could anticipate some difficulties in raising those rates back up, couldn't they?

Mr. KIPP. They could, but you know when the rails reduce their rates right now, and we found some of them that are below out-of-pocket cost——

Mr. KORNEGAY. You cite some of them in your statement I believe.

Mr. KIPP. That is correct. The Commission has permitted them to reduce these rates. Why, I don't know; but, you see, I have this feeling: That as this pattern changes, once competition is eliminated, the railroads will come back in and say: "This current rate is not compensatory to me," and when it comes to cost studies you get yourself into very dangerous ground, when you are proving the cost of moving one commodity, and I am afraid that is what is going to happen.

They can come in and justify an increase in this rate because they turn out to be noncompensatory suddenly.

Mr. KORNEGAY. Would it not be within the authority of the ICC to keep that rate down to where it had been?

Mr. KIPP. It would.

Mr. KORNEGAY. Do you feel that that would be any deterrent on the part of the railroads to setting an unreasonably low rate simply and purely for the purpose of eliminating a competitor, knowing that they would have trouble raising that rate after the competition was eliminated?

Mr. KIPP. I have a feeling it would enter into their thinking. Whether it would turn out to be a deterrent or not I don't know.

Mr. KORNEGAY. Thank you. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Long.

Mr. LONG. Mr. Kipp, do you understand the essence of the argument of the railroads to be that they are entitled to the same treatment under the law as the truckers and the bargelines?

Mr. KIPP. Yes, sir; that is the basis of their argument—the word "equality."

Mr. LONG. In your testimony here yesterday and today you have treated this point of equality, not so much in the sense of equal treatment under the law, but the equality of the result of any change that would treat them the same way under the law as the other segments of the transportation industry.

How do you feel about their argument as to equal treatment under the law?

Mr. KIPP. I think their argument is directed specifically at competition with which they are now confronted and I think the railroads are overlooking in their arguments and in their proposals that they are espousing before you. How in the world does the public get equal treatment under H.R. 4700.

Mr. LONG. Let's not go to that point. Let's go directly and specifically to their argument that under the law they are entitled to exactly the same treatment that the bargelines are entitled to and that the truckers are entitled to, restricting it to the very simple terms that under the law they are entitled to the same treatment. I am not arguing but that this is not without considerable weight because of course, it is, but restrict it to the question as to whether or not under the law they are entitled to the same treatment.

Mr. KIPP. That is exactly their argument.

Mr. LONG. And you are saying that because the result would be so inequitable they should be deprived of this equality under the law?

Mr. KIPP. Yes, sir. The dangers to the public in my opinion are too great.

Mr. LONG. This outweighs the generally accepted principle of equality under the law?

Mr. KIPP. That is right.

Mr. LONG. Thank you.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. Mr. Kipp, with reference to page 21 in the mimeographed copy that was presented to the committee, you refer to the regulated rates on taking cotton from Birmingham to Mobile, from Dallas to Houston, and from Little Rock to New Orleans. Can you provide the committee with the information on what the present rates that are regulated between those points on cotton are?

Mr. KIPP. Yes, sir; I can. I don't have them. I can, yes.

(The following data was supplied to the above request:)

KRAMER-CONSOLIDATED FREIGHT LINES, INC.,
Detroit, Mich., May 20, 1963.

Re H.R. 4700.

Hon. LIONEL VAN DEERLIN,
House of Representatives,
Washington, D.C.

DEAR MR. VAN DEERLIN: In connection with the testimony which I presented before the Committee on Interstate and Foreign Commerce on April 30 and May 1, 1963, with respect to H.R. 4700, you requested that I supply for the record the railroad rates on unmanufactured cotton moving from Birmingham to Mobile, from Dallas to Houston, and from Little Rock to New Orleans.

This information with appropriate tariff references is set forth below:

Birmingham to Mobile, a distance of 241 miles, carload minimum 37,500 pounds, 42½ cents; Southern Freight Tariff Bureau, ICC, S–214, Tariff No. 750–E.

Dallas to Houston, a distance of 244 miles, carload minimum 25,000 pounds, 54½ cents; minimum 50,000 pounds, 44½ cents; and minimum 65,000 pounds, 38½ cents; Texas and Louisiana Freight Bureau Tariff, ICC 970, Tariff No. 59–D.

Little Rock to New Orleans, a distance of 416 miles, carload minimum 25,000 pounds, 70 cents; minimum 50,000 pounds, 54 cents; and minimum 65,000 pounds, 49 cents; Southwestern Lines Tariff, ICC 4268, Tariff No. 208–K.

By copy of this letter I am also supplying this information to the committee clerk for inclusion in the record.

Very truly yours,

DONALD P. KIPP.

Mr. VAN DEERLIN. You asked who is going to get the cotton crop of Texas from Dallas to Houston at the same price as is charged for moving cotton from Birmingham to Mobile and who is going to be responsible for guaranteeing that Mr. Harris' cotton moves from Little Rock to New Orleans at the price relative to the movement of cotton between Birmingham and Mobile and from Dallas to Houston, and there is an assumption that these are relatively the same now, and closely guarded by the ICC.

Mr. KIPP. Yes, there is.

Mr. VAN DEERLIN. Over on page 23—the railroads, you say, don't seek equality.

They seek a license to hunt down their competitors, careless of the fact that in the process they would do irreparable damage to the American public.

Then you add the suggestion that "thinking of this sort has influenced the executive branch of our Government." Does a representative of the American Trucking Associations wish to leave this committee with the impression that he thinks that it is the aim of this administration to return us to the day of the predatory robber barons?

Mr. KIPP. I believe it is not the intent of the administration to do any such thing, but I do believe there is grave danger that the result of the adoption of this recommendation might lead to that result.

Mr. JARMAN. Would the gentleman yield?

Mr. VAN DEERLIN. Yes, sir.

Mr. JARMAN. There was a particular sentence in the statement that struck me as needing more clarification, particularly that part of it that reads:

* * * careless of the fact that in the process they would do irreparable damage to the American public.

Do you take the position, Mr. Kipp, that the motor carrier industry is more careful of the interests of the American public than is the railroad industry? Would you not agree that the railroad industry is just as much interested in the goodwill of the traveling and shipping public——

Mr. KIPP. Oh, yes.

Mr. JARMAN (continuing). As the motor carrier industry?

Mr. KIPP. Certainly, Mr. Jarman, I think we are all interested in the American public.

Mr. JARMAN. Is that sentence your own phrasing?

Mr. KIPP. I believe it is, yes.

Mr. JARMAN. Do you stand by the wording of what I consider a hard-hitting, even a castigating reference to a competitive line of the transportation industry?

Mr. VAN DEERLIN. And to the administration.

Mr. JARMAN. Yes, in the next sentence or two with reference to the Executive White House position on it.

Mr. KIPP. Were I to write this again I would leave the word "careless" out.

Mr. JARMAN. My own reaction when I read a statement of that sort, zealousness on the part of a witness in behalf of a cause that he espouses, is that to justify that kind of hard-hitting statement I believe the committee would want, certainly I, as a member of the committee, would want, to hear a good bit of evidence and some facts that would back it up.

Mr. KIPP. As I say, if I were to write it again I would leave that word out and I apologize to the committee for being so careless in my use of wording.

Mr. JARMAN. May I ask this—in line with the same paragraph with reference to the President. You say:

> The President himself has some doubt because he suggested an alternative which might well be pursued.

Yesterday Mr. Bresnahan in testifying, and I believe you were here at the time——

Mr. KIPP. Yes, sir.

Mr. JARMAN (continuing). In responding to I think Mr. Younger's question as to that alternative proposal frankly admitted that he now understands that there is no practical way of achieving the alternative. Do you take the same position on the alternative?

Mr. KIPP. I will say this. I think it is not expedient politically, perhaps, to do it but I do say further that to do it would solve a great many transportation problems that exist today, looking at it just selfishly from the transportation standpoint.

Mr. JARMAN. Of course, in trying to deal with legislation we have to deal with it in terms of what we think can or cannot be achieved in trying to pass a legislative body.

Mr. KIPP. Yes.

Mr. JARMAN. As a practical matter do you think we would have any real chance of passing the alternative solution that has been suggested?

Mr. KIPP. That I do not know. I would have my doubts about it.

Mr. JARMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Kipp, I want to ask just one question for clarification purposes if I may. You have referred to appendix A. There are several items that I could refer to, but I will not take the time. Let me refer you to No. 7. Well, let's take No. 8. Either one would be all right, but in No. 8 you are talking about coal. You show that class I railroads have a tonnage haul of 331,732,000 tons and motor carriers 228,000 tons.

Mr. KIPP. Yes, sir.

The CHAIRMAN. Waterborne tons transported, 117,674,000 tons.

Mr. KIPP. Correct.

The CHAIRMAN. Then you state, as you did in your statement, that the potential rail traffic then would be to recapture the whole thing, a total of 449,634,000 tons.

Mr. KIPP. Yes, sir.

The CHAIRMAN. Is there some duplication there?

Mr. KIPP. Not that I have discovered. I think the addition of 331,732,000, plus the 228,000, plus the 117,674,000, brings us to a total of 449,634,000; if I am reading the right column.

The CHAIRMAN. I mean by duplication, Mr. Kipp, is some of this tonnage included both transported by rail and transported by water?

Mr. KIPP. Yes, sir. In that sense there may be a duplication, if we have a portion of this tonnage move part way by rail, part way by water, and part way by truck. In that instance everyone would be reporting his tonnage and we would have some duplication.

The CHAIRMAN. As a matter of fact, I think the total production of coal and coke is below this in the country, so I don't know how you could report here the transportation by the various modes of this product in substantially more millions of tons than was actually produced and transported in the country.

Mr. KIPP. I have some figures on that, sir. The statistics indicate that during the year 1962 there were approximately 423 million tons of bituminous coal mined in the country. Of that quantity about 365 million tons were transported by rail from the mines.

There was a truck movement of about 34 million tons, and an additional 10 or 12 million tons were loaded directly from the mines into river barges. Well, we mined 423 million tons of coal in 1962; so if we account for the duplication here of multiple moves from rail to barge to truck, I think that these figures are not exaggerated.

The CHAIRMAN. They are just not clear. You are showing something that is not an actual fact here.

Mr. KIPP. It is an actual fact. It is a fact.

The CHAIRMAN. It may be, but I simply cannot see it.

Mr. KIPP. Maybe I am not making myself clear. These figures are developed to show—in an effort to show, at least—what would happen if the railroads moved all of this tonnage overland.

The CHAIRMAN. I don't want to get into a long argument about it because that just simply to me is information that I think we should review because you know as well as I know that a lot of this transportation is such that these products shown here could never go by rail. I just feel that there is a lot of information in there that is included to make it show that it is a greater problem than actually exists, because I know and you know that ore, as an example, and other products come in by boat that are transported up to the docks and there it is used and never goes on rail, and never can go on rail because we haven't got to that point yet that these railroads can run these trains on water.

Mr. KIPP. Granted.

The CHAIRMAN. It seems to me that there is a lot in that that needs analyzing and I merely call it to your attention to show that I think perhaps we better keep in mind what are the actual facts.

You have made a very fine statement here from your viewpoint and your organization's viewpoint. You have been very cooperative in your answers to the questions, and for your statement and presentation on behalf of the committee, I want to thank you very much.

Mr. KIPP. Thank you very much, Mr. Chairman and gentlemen.

The CHAIRMAN. The next witness is Mr. J. David Brothers of Richmond, Va. I am glad to observe the presence of our distinguished colleague and friend, the Honorable Vaughan Gary of Richmond, and we are pleased to have Mr. Gary to present to us his constituent as the next witness.

STATEMENT OF HON. VAUGHAN J. GARY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. GARY. Thank you, Mr. Chairman. I am here merely for the purpose of presenting my constituent and friend to this committee. I will say to the committee he is eminently qualified by background and experience to testify with some authority on this subject.

Before I came to the Congress 18 years ago I had some practice in the field of transportation. About that time a young man in Richmond obtained a pickup truck and organized what was known as the New Dixie Lines. He started out with one truck. Today he is operating as a common carrier—irregular route, with extensive operations in Georgia, South Carolina, North Carolina, and Virginia. His home office is still in Richmond. He has been a successful operator. He has served as president of the Virginia Highway Users Association, which is the organization of trucks in Virginia.

He is appearing here today as the president of the Common Carrier Conference—Irregular Route, of the American Trucking Associations, Inc., and I can say to you he is a person of absolute integrity. I have known him for many years and the committee can depend upon any representation that he makes to them.

I take great pleasure in presenting to you Mr. J. David Brothers.

The CHAIRMAN. Thank you, Mr. Gary. We are pleased to have you with us.

Mr. GARY. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Brothers, we will be very glad to have your statement.

STATEMENT OF J. DAVID BROTHERS, PRESIDENT, NEW DIXIE LINES, RICHMOND, VA.; ACCOMPANIED BY EDWARD V. KILEY, RESEARCH DIRECTOR, AMERICAN TRUCKING ASSOCIATION, INC.

Mr. BROTHERS. Thank you very much, Mr. Gary. I certainly hope I will be worthy of those very kind remarks. My name is J. David Brothers. I am president of New Dixie Lines, Inc., Richmond, Va. New Dixie Lines is a motor common carrier of general commodities over irregular routes. I am a member of the executive committee of the American Trucking Associations, Inc., and also president of the ATA Common Carrier Conference—Irregular Route, a conference affiliated with the American Trucking Associations.

I am appearing today as a spokesman for the American Trucking Associations and the conference in opposition to the proposed legislation that would remove from the Interstate Commerce Commission its control over minimum rates on bulk and agricultural commodities.

I have with me Mr. Edward V. Kiley, research director of the American Trucking Associations, Inc. I wish to thank the committee for the opportunity to appear and make this presentation and I would like to tell the chairman and the gentlemen of the committee that I remember your admonition of yesterday to come here without competitive bitterness and I certainly subscribe to those sentiments and I assure you that I come here with one objective, to state the facts as I see them. I have many close friends in the railroad industry, and I

work very closely with the railroad industry in my own company. I simply am attempting to state the facts as I see them.

My statement will be devoted to discussion of three major fallacies that underlie present efforts to seek major changes in our basic transportation law.

The first fallacy is that there is a serious "crisis" in transportation requiring the proposed action.

The second fallacy is that the proposed elimination of effective ICC minimum rate control would save the Nation's shippers billions of dollars in transportation charges.

The third fallacy is that the Interstate Commerce Commission has not been sufficiently liberal in allowing the railroads to reduce rates on bulk and agricultural commodities and, therefore, the Commission's control over minimum rates must be removed.

As has happened so often in the past, the Nation's railroads are seeking to have major surgery performed on the Interstate Commerce Act in order to solve what they claim is a "crisis in transportation."

The railroad industry's cry of "crisis" has been echoing down the halls of transportation history for as far back as I can remember. It reminds me of an old proverb, heard often in the field of medicine. It is to the effect that the answer to a long life is to have a chronic illness and learn to take care of it.

In many ways this has application to the railroad story. Their ever-present crisis in transportation is the railroad industry's chronic complaint. They have learned to keep it alive in the minds of the public, and to stay pretty healthy along with it.

Let me, for example, quote the concluding paragraph from a story that appeared in a specimen issue of one of our national news magazines. The story was referring to a statement made by the president of a large railroad and closed as follows:

> Railroad prosperity can be assured if railroads are encouraged to greater initiative in carrying on their work, if they are allowed to earn and pay a fair return to those who are willing to buy and hold railroad bonds and stocks, and if they have a margin of surplus as a credit basis to expand their facilities and equipment and to protect them against losses, depressions, and emergencies.

When was this statement made? Yesterday, last month, last year? No. It was made in 1922 and I am quoting from a specimen issue of the first edition of Time magazine, dated December 30, 1922.

There is no crisis in transportation today. However, let me hasten to add, with all the emphasis at my command, that while there is no crisis at this time there will be one, and one of serious proportions, if the railroads succeed in selling the Congress the deadly idea of cutting away the Interstate Commerce Commission's control over minimum freight rates.

If Congress heeds the railroad complaint and takes the sharp surgical knife to the rate regulatory powers of the Commission we will be seeing the beginning of the end of effective transport regulation and of the transport system we have today. We would have real chaos in transportation, and this would be a crisis in the major sense of the word.

Now, let me hasten to add that denial of the railroad industry's cry of crisis does not mean there are no problems in transportation. Transportation is a dynamic industry and we shall always have problems that require application of the best minds to solve. However, none

of these problems is subject to solution in any way by a weakening of the powers of the Interstate Commerce Commission. In fact, the problems that exist in transportation require a strengthening of the Interstate Commerce Act and of the Commission's authority rather than a weakening of either.

In actuality the "crisis" the railroad industry is crying about is not a railroad problem in the overall sense of the word. What we have today are "problem railroads" rather than a "railroad problem." If we look behind the generalizations regarding the railroad industry's condition we find at once, like all industries, it is composed of companies having varying degrees of financial success. There are good roads and bad roads. The securities of some are "blue chips" ranking with the best on Wall Street; others are doing fairly well while still others are not doing so well.

Ordinarily we would pay little heed to the railroads' cry of financial distress. They have been making it so long it has ceased to be news. However, since we are being asked to make drastic revisions in our basic transportation statute because of this plea, we should bring the facts to light and see just what the situation is.

Today, the financial ills of any ailing railroad most often can be traced to two principal factors:

1. Unprofitable passenger service.
2. Heavy investment in obsolete facilities.

Unprofitable passenger service has been the albatross around the railroad industry's neck for many years. In the 16-year period since World War II, 1946–1961, the class I railroads have had aggregate losses in passenger service amounting to more than $9 billion.

This is the prime area of the difficulty faced by the railroads and an analysis of its impact quickly shows the variation in the relative effect on different railroads. It shows why it can be said that we have "problem railroads."

In order to bring these facts before the committee we have prepared a few simple charts to enable you to see the true impact of the railroads' passenger losses, and they are attached to my statement, Mr. Chairman.

What we have done is to take the total of 102 class I U.S. railroads and break them down into three groups, the yardstick being the amount of passenger service they perform.

The first group are roads regarded as having heavy passenger traffic, with more than 8 percent of total gross revenues coming from passenger service. The second group we call medium passenger traffic roads, passenger traffic acocunting for 4.1 to 8 percent of total revenues. The third we classify as light passenger traffic roads, passenger traffic acocunting for 0 to 4 percent of total revenues.

The data shown in all cases are for 1962.

Chart I, group A, shows the operating results for 14 railroads, operating 56,093 miles of road. They had gross operating revenues of $2,860 million. These roads operated 26 percent of class I railroad mileage and they accounted for 27 percent of total class I rail freight revenues—and note this carefully—58 percent of the total passenger revenues of the class I roads.

Roads in this group received 12.6 percent of their total revenue from passenger service. But as a result of the heavy passenger burden,

the net operating income was only 3.8 percent of total revenue from all services.

Group B, the medium passenger traffic roads, consist of 22 roads operating 84,610 miles of road and having gross operating revenues of $3,334 million. They operated 39 percent of the mileage; accounted for 36 percent of the freight revenues; and 30 percent of total passenger revenues. These roads derived 5.6 percent of their operating revenues from passenger service and their net operating income was 6.8 percent of total revenues from all services.

Group C, made up of roads with light passenger traffic or none, consist of 66 roads, operating 77,982 miles of road. They had gross operating revenues of $3,246 million. They operated 36 percent of the mileage, handled 37 percent of the freight traffic but only 11.7 percent of the passenger traffic. Passenger revenues were only 2.2 percent of total revenues. For this group net operating income was 12.1 percent of total revenues from all operations.

In quick summary, the heavy passenger traffic roads accounted for 30 percent of total class I railroad revenues and for only 15 percent of total net railroad operating income. The medium passenger traffic roads accounted for 35 percent of total rail revenues and 31 percent of net railway operating income. The third group, those with little or no passenger traffic, accounted for a little more than one-third, 35 percent, of total rail revenues and accounted for more than half, 54 percent, of net operating income of all class I roads.

Chart II shows a regional breakdown of the 102 class I railroads. It shows generally the same information we have just discussed. What we believe comes forth quickly is the regional character of railroad difficulties, the eastern district, encompassing the Northeast and mid-Atlantic areas. This is the home grounds of the New Haven, the B. & O., the Pennsylvania, and the New York Central.

What does this mean? We believe it means that the movement of freight traffic by railroad is still a pretty profitable business. It is only when the operating revenues from freight service are called upon to absorb the large deficits resulting from passenger operations that the financial picture of the railroads begins to worsen.

Now this presents us with a paradox, if the problem of the railroads lies primarily with unprofitable passenger service how do they intend to cure it by seeking to establish lower rates on freight traffic? In fact, what logic is there at all in attempting to solve the passenger problem through manipulation of freight rates? It seems to me that the railroads are a good deal like the man who lost his collar button in the bedroom but went to look for it in the bathroom because the light was brighter there.

It is also interesting to note that even with the burden of unprofitable passenger service the overall railroad picture does not look bad when compared with operations in other major industries. What I am referring to is the ratio of net income to gross revenue, or net income to gross sales.

For the 10-year period, 1951–60, the class I railroads had an average net income to revenue of 7.19 percent. During this same period General Motors Corp. averaged 7.62 percent; General Electric Co., 5.62 percent; and United States Steel, 7.34 percent. In short, by this important financial yardstick, the railroad industry is not doing so badly.

Now, I fully realize that these data will raise the blood pressure of some of my friends in the railroad industry. They will hasten to say that the ratio of net income to gross revenue means very little. The important thing, they say, is the railroad industry's return on investment. In fact, the return on investment is the standard prop used in every performance attempting to show the poverty-stricken condition of the railroad industry.

Railroad spokesmen never cease to quote the latest return-on-investment figure as being too low but I have failed to find definite statements as to what would be satisfactory. However, assuming that the magical figure of 6 percent would be more acceptable, it is interesting to note that in only one year since 1922 have the railroads reached this level. In 1942, a war year, the rate of return was 6.36 percent. But of greater importance is that during the 1920's when their competition was much less than it is today, they did not reach the 6 percent level.

The difficulty in this area lies not in the net income of the roads but in the investment base used to compute the rate of return. This is the second of the two points mentioned earlier in this statement, investment in obsolete facilities.

But don't take my word for the existence of unprofitable railroad structure. Take the word of Mr. Jervis Langdon, Jr., now president of the Baltimore & Ohio. In June 1961, testifying before a congressional committee and speaking for the Association of American Railroads, he said:

> * * * we want to be able to contract the plant, the overall railroad plant, so that it will be large enough to serve the country and yet not so large as to be beyond the capacity of the traffic that we can get to support it.

Mr. James Symes of the Pennsylvania, Mr. Arthur Bayless of the New York Central and many another railroadman have expressed similar convictions, have said literally, or in effect, that we have too much railroad structure for the business they can expect to get.

But for explicit, unmistakable terms listen to these remarks made by my fellow Virginian and friend, Stuart T. Saunders, president of the Norfolk & Western Railway Co., speaking at a Newcomen Society meeting in New York. Said he:

> * * * there is much surplus railroad mileage in this country today, and this is especially true in the East. Of the approximately 225,000 mainline miles now in service, 23,000 miles, or less than 10 percent, carry 50 percent of our total freight ton-miles, and at the other extreme, 67,000 miles, or about 30 percent carry only 2 percent of the total freight business.

In every hearing before the Congress that has dealt with transportation questions involving the railroad financial condition, the rate of return has been cited as in need of immediate upward correction if the railroads are to survive or avoid nationalization. The rate of return has not improved, the rails are still pleading but they are still surviving and remain out of the clutches of Government ownership.

I suggest there is strong reason to suspect the rate of return, as computed and used by the railroad industry as being an incomplete or misleading measure of their true condition. The possibility of this being the case aroused my curiosity to the point where I began to check other measures of financial stability. Not being a specialist in railroad finance I began to read the reports of those who are. My research led me to Moody's Transportation Manual. I selected the

Pennsylvania Railroad, since it is the Nation's largest, and checked Moody's analysis of their operations for 1961.

Using the rate-of-return method applied by the railroads, and referred to in their pleadings before the Congress, the Pennsylvania's rate-of-return for 1961 was 0.78 percent. However, this figure does not appear in Moody's, nor does any figure like it. What Moody's shows, in a table titled "Capitalization and Other Factors—Securities and Earning Power Per Mile of Road Operated," is a figure labeled "Percent railway operating income to total adjusted capital." For the Pennsylvania Railroad this figure is 5 percent, or more than six times the figure developed through the railroad method.

It would be interesting to see what Moody's analysis, or method, would show for all railroads. Unfortunately, this is not available. However, it is interesting to speculate that if the Pennsylvania ratio held for all roads the 1962 rate of return of 2.67 percent would become more than 18 percent. This might be high.

But the important point is that there are obviously different methods of computing the rate of return or a similar financial index. Perhaps these variations might explain the puzzling picture of the true rail financial condition. Or, as a colleague of mine in the trucking industry said recently: "By its own confession, the railroad industry has been a basket case for so long it must surely represent the most amazing financial-health paradox in our economy, robust on Wall Street, at death's door in the public prints and in the halls of the Congress."

Our research into rail financial conditions developed other interesting data which we believe support our contention that the railroad plea of poverty is not all they purport it to be.

For example, according to data contained in the 76th Annual Report of the Interstate Commerce Commission, the shareholders' equity in class I line-haul railroads increased from $16.6 billion in 1951 to $18.5 billion in 1961, or an improvement of $1.9 billion, or 10 percent.

During this same period, the railroads added $2.7 billion to retained income while funded debt was reduced from $9.9 to $9.5 billion; a reduction of $400 million. The ratio of debt to total equity and debt declined from 37.5 percent in 1951 to 34.1 in 1961. Thus, while they have been doing the most complaining their financial position has been improving.

The cash flow position of the railroads is another factor that should be taken into consideration in evaluating their overall financial health. Cash flow, which represents net income plus depreciation and retirements, is widely acknowledged as a valid test of fiancial stability, and of ability to meet investment requirements.

For the year 1962, the cash flow position of the class I railroads was approximately $1,232 million, or 19 percent above 1961. It was equal to the average of the plus war years, 1941–45, and only slightly below the average for the 1953–61 period.

In their ability to make capital expenditures for additions and betterments there seems to be no suffering on the part of the rails. During the 17-year period, 1946–62, they have expended a total of $17,399 million, for an average of more than $1 billion a year. Currently, their capital expenditures are averaging 8.7 percent of total revenues, a much higher ratio than many of our major industries.

The second fallacy in the railroad industry's arguments in support of the rate deregulation program is the assertion that elimination of the Interstate Commerce Commission's minimum rate controls would save the Nation's shippers billions of dollars.

The railroad industry's statements on this are inevitably made with wide sweeping gestures and in broad generalizations. Little or no factual data are forthcoming to support them. This lack of factual support is not difficult to understand. There is no valid factual support; true savings in transportation costs are not to be had through the type of competition rate war inherent in the railroad proposals.

In his statement last year before the Commerce Committee of the U.S. Senate, Mr. D. W. Brosnan, president of the Southern Railway indicated his belief that the public was paying $1 billion a year more for transportation service than would be the case if the railroad rate proposals were put into effect.

First of all, we do not believe such a huge overcharge exists today in transportation. We believe the Nation's shippers are receiving a high quality of transportation at a minimum cost. In many ways, today's transportation is one of the biggest bargains in our economy. There is no evidence that transportation charges have been moving ahead at too rapid a pace. Quite to the contrary. From 1947 through 1961, the gross national product increased by 123 percent; during the same period the aggregate gross freight revenues of all carriers subject to ICC regulation increased by 80 percent.

This does not mean that there is no room for progressive improvements that may reduce transportation costs and do so in a manner completely consistent with a generally healthy financial condition for the carriers. However, we must make a careful distinction between cheap transportation available on a temporary basis as the result of uncontrolled, competitive rate wars, and real savings in transportation costs resulting from improved technology and arrived at through an orderly process of rate determination.

What the railroad industry is holding forth to the public is the illusion of transport savings through rates on competitive traffic depressed below the level of the cost of providing the service. This is false economy. The full cost of providing necessary transportation services must be paid. No carrier—rail, motor, or water—can exist on a diet of rates that do no more than cover out-of-pocket costs.

What must inevitably come about is that revenue losses resulting from below-cost rates must be recovered by increases on traffic less subject to competitive pressures. The railroads currently are caught in a situation where 65 percent of their total tonnage is moving at rates below full cost. Actually, in the area of bulk and agricultural commodities, where elimination of minimum-rate control is sought, a significant number of commodities are being moved by the rails at less than out-of-pocket costs. There are areas in which the railroads seemingly hold out the prospect of further reductions, meaning that additional increases would have to be sought in other areas to make up the loss.

This type of rate manipulation does not represent true savings in transportation. Admittedly, temporary savings may come to a selective group of shippers through an uncontrolled, competitive rate war. But this is the kind of saving that accrues to any of us, when as

motorists, we are able to take advantage of the occasional price wars that crop up among gasoline stations.

For a short period we realize savings of a few pennies while the competing dealers fight to see who can hold out the longest. Eventually the war ends, as it must, and things return to normal, including the price of gasoline.

Even under rate regulation we have had some experience with this type of activity in transportation. If such experience teaches us anything it is that any savings are illusional. There is a wide, and important, difference between true savings in transportation costs and the short-term availability of cheap transportation, with the latter usually coming at the expense of adequate transportation service.

The charge that the ICC has failed to grant requested rate reductions, particularly on competitive traffic, has long been an arguing point of the railroads. They have couched these arguments in different terms, referred to as the "dead hand of regulation;" the "punitive scheme of regulation;" and the "shackles of outmoded law."

One of the most concise answers to this charge came a few years ago from Mr. Anthony Arpaia, at that time a member of the Interstate Commerce Commission. Speaking before the Third Michigan Railroad Management Seminar, February 27, 1957, at Ann Arbor, Mich., Commissioner Arpaia challenged the statements of the railroads regarding failure of the ICC to permit rate competition.

Here is what he had to say:

> Railroads alone file with the ICC an average of over 3,000 rate changes every working day of the year. During the year 1956, how many rates out of the million or more rate changes filed by railroads were adjudged to be unlawful by the Commission after protest by competing forms of transportation? Ten thousand? Two thousand? One thousand? One hundred? No. Just exactly 12. Now how much traffic was involved in these 12 cases? In other words, how badly hurt were the railroads by our finding that these rate changes were unlawful? If they had been able to obtain every single pound of the traffic involved, from competing forms of transportation, which of course is hardly likely, they could have added only $1,228,879 to their gross revenue; $1,109,359 of this amount from water carriers and a mere $119,520 from motor competitors. This represents only eleven-thousandths of 1 percent of the total revenue of railroads for the year 1956.

Here is the record for today, 1962.

In 1962, a total of 176,273 freight tariffs were filed with the Interstate Commerce Commission by all carriers subject to its jurisdiction. Of these 3,734, or 2.11 percent were suspended for action by the Commission.

In 1962, the railroads filed 48,126 freight tariffs. Objections to these proposed rate changes resulted in 745 suspension board cases, 1.54 percent of the total filings. Thus, there were fewer objections to the railroad filings than to the filings of carriers generally.

What is extremely interesting regarding the 745 suspended filings is that 106 of them involved bulk commodities that would otherwise be exempt if moving by water, one of the areas in which the rails claim they are being prevented from reducing rates. Of the 106 suspensions involving bulk commodities only 20 were earmarked for further investigation, the balance, or 86 filing, were permitted to go into effect.

The 20 filings marked for investigation, are being disposed of by the Commission or by other action. In 3½ cases the full Commission

has reversed the suspension board; 5½ cases have been withdrawn and the remaining 11 are awaiting a final decision.

This record does not sound like hampering or interference with a proper process of rate determination. It is a sound handling of matters of serious economic consequence and is what Interstate Commerce Commissioner, Rupert L. Murphy had in mind when, in speaking recently before officials of the Commission of the European Economic Community in Brussels, Belgium, he said:

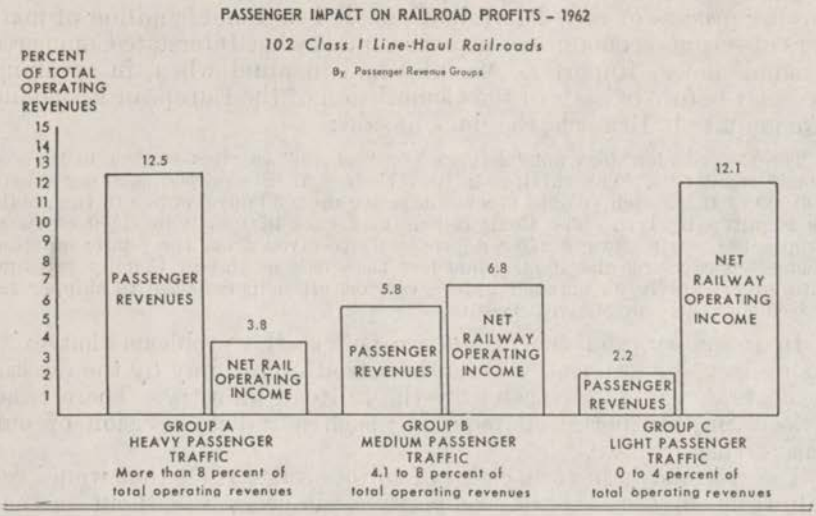
> The Commission does not "manage" or "control" carriers subject to its economic regulation. The carriers initiate their own rate proposals, filing nearly 200,000 of them each year to become effective upon 30 days' notice to the public as required by law. The Commission intervenes in less than 4,500 of these proposals, nearly always after a protest is received from the public or from competing carriers, and it suspends less than half of these. Usually rates go into effect exactly as planned by the carrier, often in response to shipper requirements and competitive necessity.

In summary, and conclusion, we believe the problems that exist today in transportation will not be solved in any way by the drastic legislative changes advocated by the railroad industry. There is no 'crisis" in transportation requiring such a radical revision of our basic transport laws.

The railroad industry's claim of substantial savings that would result from an unrestricted, competitive rate war is without factual basis. True savings in transport cost will come, as they have in the past, through an orderly process of sound regulation, not through the chaos that will result from uncontrolled and unreasonable rate reductions.

And finally, the record of the Interstate Commerce Commission in permitting justified competitive rate adjustment refutes the charges that such rates are not allowed to go into effect. Where a case has been made that the requested adjustments are in the public interest the Commission has not stood in the way. This is the basic difference between the railroad approach to competitive ratemaking and that of the Interstate Commerce Commission, the former would have rates decided in terms of the railroad interest, while the Commission decides them in the only way they should be decided, in the public interest.

(The data submitted follows:)



assenger Traffic Groups	Number of Railroads	Miles of Road Operated	Operating Revenues (in thousands of dollars) Freight	Passengers	Total	Net Railway Operating Income	% Passenger Revenues of Total Operating Revenues	% Net Operating Income of Total Operating Revenues.
A. Heavy	14	56,093	2,163,084	360,482	2,859,764	107,354	12.6	3.8
B. Medium	22	84,610	2,874,295	186,341	3,333,594	225,970	5.6	6.8
C. Light	66	77,982	2,953,356	72,236	3,246,422	392,936	2.2	12.1
Total	102	218,685	7,990,735	619,059	9,439,780	726,260	6.6	7.7

CHART II

Passenger impact on railroad profits, 1962—102 class I line-haul railroads by districts and passenger revenue groups

Group	Number of carriers	Number of miles	Revenues		Total	Net railway operating income	Percent passenger revenues of total (5÷6)	Percent net railway operating income of gross revenues (7÷6)
			Freight	Passengers				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Eastern district:			*Thousands*	*Thousands*	*Thousands*	*Thousands*		
A	7	22,869	1,250,273	261,194	1,735,208	12,457	15.1	0.7
B	7	8,287	403,874	31,144	478,460	−7,506	6.5	−1.6
C	24	18,148	885,632	20,410	974,935	71,714	2.1	8.4
Total	38	49,304	2,539,779	312,748	3,188,603	76,665	9.8	2.4
Southern district:								
A	5	16,824	536,303	61,027	660,194	60,646	9.2	9.2
B	4	826	21,844	1,306	26,051	106	5.0	.4
C	18	27,646	1,225,239	32,642	1,338,017	217,658	2.4	16.3
Total	27	45,296	1,783,386	94,975	2,024,262	278,410	4.7	13.8
Western district:								
A	2	16,400	376,508	38,261	464,362	34,251	8.2	7.4
B	11	75,497	2,448,577	153,891	2,829,083	233,370	5.4	8.2
C	24	32,188	842,485	19,184	933,470	103,564	2.1	11.1
Total	37	124,085	3,667,570	211,336	4,226,915	371,185	5.0	8.8

Shareholders' equity and long-term debt, 1951–61: class I line-haul railroads and their lessor subsidiaries

Year ended Dec. 31—	Shareholders' equity					Total long-term debt [1]	Total equity and debt	Ratio of debt to total equity and debt
	Total	Common stock	Preferred stock	Capital surplus	Retained income			
	In thousands of dollars	*In thousands of dollars*	*In thousands of dollars*	*In thousands of dollars*	*In thousands of dollars*	*In thousands of dollars*	*In thousands of dollars*	*Percent*
1951	$16,602,472	$7,093,439	$1,963,978	$287,805	$7,257,250	$9,942,355	$26,544,827	37.45
1952	17,091,459	7,105,639	1,942,964	283,107	7,759,749	10,082,143	27,173,602	37.10
1953	17,469,719	6,890,010	1,857,735	318,194	8,403,780	10,016,006	27,485,725	36.44
1954	17,584,070	7,187,290	1,521,179	319,445	8,556,156	9,890,291	27,477,361	36.01
1955	17,879,591	7,213,028	1,300,596	433,058	8,932,909	9,910,592	27,790,183	35.66
1956	18,080,027	6,744,889	1,382,058	721,113	9,231,967	9,989,378	28,069,405	35.59
1957	18,306,144	6,138,281	1,356,468	1,250,820	9,560,575	10,139,252	28,445,396	35.64
1958	18,369,390	6,086,580	1,253,146	1,300,608	9,729,056	10,080,345	28,449,735	35.43
1959	18,504,534	6,076,283	1,234,569	1,294,674	9,899,008	9,955,743	28,370,277	34.77
1960	18,527,246	6,028,793	1,206,710	1,327,193	9,964,550	9,700,783	28,228,029	34.37
1961	18,462,947	5,370,943	1,200,985	1,909,967	9,981,052	9,542,193	28,005,140	34.07

[1] Excludes amounts payable to affiliated companies.

Sources: Seventy-Sixth Annual Report of the Interstate Commerce Commission (1962), table III, p. 212.

Annual capital expenditures and sales, 1961 and 1962

[Billions of dollars]

Industry	Investment expenditures		Sales or operating revenues		Percent investment expenditures are of sales or operating revenues	
	1961	1962	1961	1962	1961	1962
Railroads	0.67	0.85	9.5	9.8	7.0	8.7
Durable goods	6.27	7.03	174.5	194.5	3.6	3.6
Primary iron and steel	1.13	1.10	15.0	15.7	7.5	7.0
Primary nonferrous metal	.26	.31	9.7	10.5	2.7	3.0
Electrical machinery and equipment	.69	.68	34.4	37.6	2.0	1.8
Machinery (except electrical)	1.10	1.27	24.0	26.2	4.6	4.8
Motor vehicles and parts	.75	.83	23.3	28.9	3.2	2.9
Transportation equipment (excluding motor vehicles)	.38	.47	15.6	17.4	2.4	2.7
Stone, clay, and glass	.51	.58	9.1	9.8	5.6	5.9
Nondurable goods	7.40	7.65	194.2	204.7	3.8	3.7
Food and beverage	.98	.99	57.6	60.6	1.7	1.6
Textile	.50	.61	14.6	16.4	3.4	3.7
Paper	.68	.72	13.6	14.4	5.0	5.0
Chemical	1.62	1.56	29.9	32.8	5.4	4.8
Petroleum and coal	2.76	2.88	38.5	38.3	7.2	7.5
Rubber	.22	.23	6.0	6.6	3.7	3.5

Sources: "Survey of Current Business", U.S. Department of Commerce, March 1963; "Transport Economics", ICC, January-February 1963.

Mr. BROTHERS. Mr. Chairman, I realize that none of the data I have presented gives a definite answer to the question of the rails' financial condition. As I have indicated, there are successful roads and others that are in trouble. My main concern is the belief that there is sufficient question as to the true conditions of the railroads to merit very serious study before we make major changes in the Interstate Commerce Act, and the rails have advanced their financial status as a prime reason for the changes they seek.

If the Congress were to eliminate minimum rate rate regulations of bulk and agricultural commodities, it is not only the rails that would be affected. You are considering far-reaching changes that will have deep and lasting effects on markets, areas, ports, industries, in fact the whole framework of our economy.

This is a serious change and we do not believe it should be undertaken on a plea of rail financial distress that they may bring out, but might not be borne out by fact.

I thank you very, very much, sir, for the privilege of appearing here today.

The CHAIRMAN. Mr. Brothers, the charts referred to will be included in the record as part of your statement.

Mr. BROTHERS. Thank you, sir.

The CHAIRMAN. The committee will recess until 2 o'clock, at which time you may be back for any questions the members might have.

Mr. BROTHERS. Thank you, sir.

(Whereupon, at 12:15 p.m., the committee recessed to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

When the committee recessed for the noon hour, Mr. Brothers had just concluded his statement. We asked him to return for any ques-

tions that the members might have. Mr. Hemphill, do you have any questions?

Mr. HEMPHILL. Thank you, Mr. Chairman. I am sorry I missed part of your statement. On page 4 I read, however, that you say that the financial ills of any ailing railroad most often can be traced to two principal factors, one, unprofitable passenger service, and two, heavy investment in obsolete facilities.

By that did you mean to include the discourtesies that so many people have found in the passenger service of the railroads?

STATEMENT OF J. DAVID BROTHERS, PRESIDENT, NEW DIXIE LINES, RICHMOND, VA.; ACCOMPANIED BY EDWARD V. KILEY, RESEARCH DIRECTOR, AMERICAN TRUCKING ASSOCIATION, INC.—Resumed

Mr. BROTHERS. I don't know that I understand your question, Mr. Hemphill.

Mr. HEMPHILL. So many people complain to me about the fact that you don't get any service. Now they are complaining about the airlines. Is that what you are trying to say, they don't give you any courtesy or service in the passenger traffic?

Mr. BROTHERS. No, sir. I am saying that the passenger facilities or the passenger fares don't recover the cost of rendering that passenger service.

Mr. HEMPHILL. Don't you think if they had the courtesy that people would normally expect that they could have a profitable passenger service?

Mr. BROTHERS. I don't agree that they are entirely too discourteous. My daughter just made a trip to Florida, recently, and Mr. Justice Smith was indeed gracious to her on her trip down there. I don't say they are discourteous at all.

Mr. HEMPHILL. You should ride some of the airlines I have to ride back and forth home. I was insulted the last time I rode on a passenger train. What do you mean by heavy investment in obsolete facilities?

Mr. BROTHERS. I think Mr. Saunders illustrated what I am saying there. You have about 30 percent of the rail trackage handling about 2 percent of the revenue. They have a heavy investment in trackage that is nonproductive. Also they have heavy investment in passenger facilities and terminal facilities, which are no longer necessary to accommodate the volume.

Mr. HEMPHILL. Would you support H.R. 4700 if two conditions were present? One is that all commodities were free of the minimum rate regulation, and the other is that all carriers be subject to all the antitrust laws.

Mr. BROTHERS. The first part, would I support H.R. 4700 if all commodities were free of minimum rate regulation—absolutely not. This is exactly what we are opposed to. We don't believe that minimum rate regulations should be abolished. We don't think it is in the public interest.

Mr. HEMPHILL. You don't think the transportation industry can police itself?

Mr. BROTHERS. No, sir; I do not.

Mr. HEMPHILL. But you think that the trucking industry can in so far as this advantage you have in exemption?

Mr. BROTHERS. I don't agree that we have any advantage.

Mr. HEMPHILL. Why not let the railroads have the same rights you have if you don't have an advantage?

Mr. BROTHERS. The railroads do have the same rate I have to transport agricultural commodities. They can buy the trucks today if they want to and compete with the unregulated carrier the same as I can. I can buy them and compete with them. I don't buy the trucks or the necessary refrigerated vans and compete with them. Neither do the railroads. But both of us have the same privilege to do it if we elect to do it. I don't agree at all that we have any advantage on the railroads as far as agricultural commodities are concerned. Obviously, this nonregulated carrier is serving a need of the farm community. If we want to participate in that service we can do it and so can the railroads.

Mr. HEMPHILL. Take the next part of my question, please.

The CHAIRMAN. Before you leave that would the gentleman yield to me?

Mr. HEMPHILL. Certainly.

The CHAIRMAN. Mr. Brothers, if you do not engage in agricultural haul, even though the act permits you to do it if you want to, and of course, I could raise the question as to whether or not the ICC would cause you any problems as a common carrier should you go off into a different service with your same company and operate nonregulated service—but if you are not engaged in agricultural haul and are not effected by it, why are you concerned about equalizing the transportation of agricultural products by those who are engaged in them.

Mr. BROTHERS. In the first place, Mr. Chairman, I don't accept the premise that the rails don't have the same opportunity that we do. I think they do.

The CHAIRMAN. That is not what I asked you. I didn't question that at all.

Mr. BROTHERS. I misunderstood your question, I am sorry.

The CHAIRMAN. I asked you why are you concerned about any change of the existing authority today with reference to equalization of the haul of agricultural products which is the exempted phase of it versus the regulated phase of it. You know and I know and everybody knows that the railroad haul of agricultural products is regulated.

Mr. BROTHERS. Yes, sir.

The CHAIRMAN. The motor carrier haul of agricultural products is not regulated.

Mr. BROTHERS. Yes, sir.

The CHAIRMAN. You are engaged in motor carrier common carrier operations. You do not engage in agricultural haul. You could if you wanted to, but you decided you didn't want to. Since you do not engage in it and you are not affected by it as far as you are concerned, why are you concerned about equalizing between modes who do engage in that and with their own facilities, permitting the shipper to use either of the two or rather three?

Mr. BROTHERS. For three reasons, sir. First of all I think it is the first step to total deregulation. The second reason, I think to give the

rail lines the authority to reduce rates below cost for the purpose of eliminating the exempt carrier certainly is not in the interest of the farm community.

It would deprive him of the transportation service he now finds necessary. And third, to cut these costs at the expense of regulated commodities. Obviously if they reduce their rates drastically, as they would have to do to attract the traffic, they must make up for it on that portion of the traffic that is not regulated. I think that would certainly discriminate against the public who were transporting their commodities under regulations.

The CHAIRMAN. Mr. Hemphill, you may proceed.

Mr. BROTHERS. The second part of your question, Mr. Hemphill, if you would like me to carry on, would we support H.R. 4700 if all commodities were free of minimum rate regulations but subject to all antitrust laws. First of all we would not support H.R. 4700 on that basis. I think it goes in the wrong direction. I don't think it is the proper corrective action. I say that if we reach the point that the Congress in its wisdom is going to extend these exemptions to the rail lines, then I say with all the sincerity I possess that they should be subject to every antitrust law that every other business is subject to.

Today all business is subject to some restraint. Some transportation is subject to the ICC. Other business is subject to the Justice Department. If you are going to take the railroads out from under the ICC, certainly they should be put over under the Justice Department.

Mr. YOUNGER. Would the gentleman yield right there?

Mr. HEMPHILL. Certainly.

Mr. YOUNGER. I wonder if you really mean what you say when you say that the railroads, if they get a minimum rate reduction, they would be subject to the same antitrust laws as all business.

Mr. BROTHERS. I said I thought they should be on these commodities.

Mr. YOUNGER. I don't think you mean that. You mean they should be subject to all of the same regulations as the other carriers, not all business.

Mr. BROTHERS. No, sir, that is not what I said.

Mr. YOUNGER. Then you want the railroads to be subject to antitrust laws different from the laws that apply to the motor carriers.

Mr. BROTHERS. No, sir.

Mr. HEMPHILL. If the gentleman will yield back to me a minute. I included the Robinson-Patman Act in my thinking. I don't know whether you are doing that or not.

Mr. YOUNGER. He is including all.

Mr. HEMPHILL. That is what I said, all.

Mr. YOUNGER. Very well, I just wanted to understand what you meant.

The CHAIRMAN. The committee will recess until we can answer this rollcall. We should take not over 20 or 25 minutes.

(Short recess taken.)

The CHAIRMAN. The committee will be in order. Mr. Hemphill, you may proceed.

Mr. HEMPHILL. I see that you took exception to what the president of the Southern Railroad said about the public paying a billion dol-

lars more for freight than it would be paying now. What do you base your exception to that statement on?

Mr. BROTHERS. Certainly the profit of the rail industry doesn't indicate any such overcharge, nor the profit picture of the motor carriage industry doesn't indicate any overcharge. If the rates are excessively high I think the shippers would be demanding reductions, and I think management would be exercising its prerogative to reduce the rates. As I indicated we have complete freedom to reduce rates and to do it to the tune of about 200,000 changes a year now.

Mr. HEMPHILL. It seems to me that a man in that responsible position would not make that statement abstractly. He must have had some good reason to make it. I believe he was sincere in it.

Mr. BROTHERS. I don't question his sincerity, Mr. Hemphill. As I said, there may be a few selective shippers that will benefit from this thing, but they will benefit at the expense of other shippers who are not so fortunately situated. There are many, many people who won't be able to take advantage of those drastic reductions that Mr. Brosnan was talking about.

Mr. HEMPHILL. If your logic is correct, any time that any carrier gives a below-cost fare on any item being moved or any product being moved, somebody else is paying for it, is that right?

Mr. BROTHERS. Yes, sir, I think that is true. In the long run somebody else is paying for it.

Mr. HEMPHILL. When the trucking industry publishes its own tariffs in order to get the business and cuts below cost on certain items, it is charging other people, too, isn't it?

Mr. BROTHERS. I haven't seen any testimony to show that the regulated industry was establishing rates below costs.

Mr. HEMPHILL. I just ask you the question, if that happened would it not be true that it is at the expense of some other shipper, which means some other member of the public?

Mr. BROTHERS. That is true, sir. But today if we attempted to establish a rate which is below cost, I am certain two things would happen. I am certain that our competition would object and protest, and I am certain that the Commission would take a very, very long look at it. There would have to be some very extenuating circumstances to permit the establishment of a rate that doesn't meet all of the tests of the Commission.

Mr. HEMPHILL. On exempted commodities the Commission has no right to take a look at them. They are out of the picture.

Mr. BROTHERS. That is correct, sir.

Mr. HEMPHILL. So it would not follow there at all. In other words, you have absolute freedom of operation as far as the Commission is concerned.

Mr. BROTHERS. The exempted trucker has freedom of operation.

Mr. HEMPHILL. Absolute freedom so far as the Commission is concerned on those exempted commodities?

Mr. BROTHERS. Except for some of the safety regulations.

Mr. HEMPHILL. I mean as far as rates are concerned.

Mr. BROTHERS. Yes, sir.

Mr. HEMPHILL. I think that is all; thank you, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Brothers, I am very sure you are a very sincere and honest individual.

Mr. BROTHERS. Thank you, sir.

Mr. YOUNGER. You told us all about the affluence of the railroads. You should have been here about 2 years ago because you could have prevented the Federal Government from guaranteeing loans so that the railroads could buy some equipment, and you could have corrected the figures of the ICC. Also, I hope the press will take knowledge of this because I think the stock and the bonds of the railroads might take a big boost if your sincere remarks are true. If they were true, I think I could go out and make a fortune in buying some of these depressed securities of the railroads. Granted what you say is true and that they are making a lot of money, what has that got to do with the problem that we are confronted with?

Mr. BROTHERS. Let me take the last part of your question first. The very point, Mr. Younger, is that the railroads are coming in and telling you that they are in financial distress, and because they are in such financial distress you should take this drastic action and mutilate the present regulatory system of the country.

We believe there is sufficient doubt about the financial status of the raillines that such drastic action is just not warranted. We don't mean by saying that, that there are not some corrective steps that can be taken. The first part of your question, about the financial stability of the raillines, I do believe what I said very sincerely. Last week I got a market letter from one of the largest brokerage houses in Richmond, a very reputable company and one of the oldest, and after echoing the rail theme of adverse regulations, and so forth, let me tell you what they had to say and what they were recommending to their investors. The rails have outperformed the industrials for the past 12 months and have already surpassed their 1961–62 highs, a feat still ahead for the industrials. Among the 50 major industry stock groups, the rails currently range fifth in performance, a position not attained by accident. They go on to say that the Southern Pacific's record is one of the best in the industry.

The Northern Pacific, serving the Northwest section of the United States from Minnesota and Wisconsin has maintained a consistently profitable record. The Illinois Central provides the shortest route between the Great Lakes and the Gulf of Mexico and in spite of severe barge competition traffic prospects are enhanced by increasing industrialization of the South.

Let me tell you what they said about the Pennsylvania. This is always held up as the prime example of a financially distressed line.

The Pennsylvania, the counrty's largest carrier in terms of gross revenues, perhaps has the most to gain of any of the class I railroads from the successful resolution of many favorable trends now in prospect. Suffering greatly from featherbedding, passenger losses, and severe competition, the Pennsylvania's rail earnings have drifted downward from a high of 3.16 per share in 1956 to a deficit of 24 cents in 1962. Consolidated earnings, however, including income from the company's substantial other assets were 93 cents last year versus a 10-year average of $1.99.

Federal Government programs to aid large city mass transit problems, greater management control over work rules and the anticipated upturn in heavy goods production afford a brightening outlook for this highly levied system.

More significant are the profit prospects with the merger with New York Central, the elimination of duplicate track, consolidation of freight and passenger terminals, and coordination of diesel and freight car repair are estimated

to have saved the merged company approximately $80 million annually within 5 years. This amounts to almost $4 per share on the enlarged number of shares to be outstanding. Income taxes should remain quite small because of writeoff of undepreciated, but no longer needed, facilities. Important as these prospective earnings are they do not tell the whole story.

The potential sales value of abandoned roadbeds and classification cards for highway networks and industrial and commercial usage, along with other valuable downtown property in the major cities served loom large in relation to Pennsylvania's depressed price. To this must be added the company's valuable security holdings consisting of almost 33 percent of the profitable Norfolk & Western, a hundred percent of the Long Island Railroad, 86 percent of the Wabash, 99.9 percent of the Detroit-Toledo & Ironton, 82 percent of the Lehigh Valley and 50 percent of the Toledo-Peoria & Western.

Ownership interest in the Norfolk & Western alone is the most valuable asset and is currently worth approximately $20 on each share of its own stock or over 30 percent more than the present market evaluation for the equity of the entire system.

Perhaps the most vital link in the Nation's entire transportation system, Pennsylvania appears destined for brighter days and the shares around 15 warrant conclusion in our opinion and all capital gains oriented portfolios.

The point is that there is sufficient doubt in my mind and I sincerely hope there will be sufficient doubt in the committee's mind about the true financial conditions of the raillines and before you take this drastic action that is requested that you will satisfy yourselves exactly what the financial condition of the raillines is. We don't think it warrants this kind of drastic legislation.

Mr. YOUNGER. That letter is from a brokerage house that sells securities?

Mr. BROTHERS. Yes, sir. It is from the company in Richmond dated April 19, 1963.

Mr. YOUNGER. You wouldn't expect them to put out a very dark letter would you if they want to sell something.

Mr. BROTHERS. They are a very reputable company. I would be amazed if they would put out something that is misleading and not representative of the facts.

Mr. YOUNGER. That is not misleading. It is just their guess as to the future.

They still say Pennsy only made 90 cents a share as against $1.90 before. That doesn't indicate a great period of affluence. Again what does that have to do with our problem?

Mr. BROTHERS. As I said before, Mr. Younger, the rails are requesting this service or requesting this legislation because of an alleged financial distress.

Mr. YOUNGER. No, if you read the record I don't think it is predicated on that. I don't think the President predicated his recommendations solely on distress. If you will read it, he predicated it on inequality.

Mr. BROTHERS. I think there are ways to correct the inequality and preserve a sound transportation system and protect the public other than as contained in this legislation.

Mr. YOUNGER. You mentioned quoting from a magazine dated back in 1922 about the rails at that time. I don't know whether you are old enough to remember 1922, but if you will recall that was a period of quite a depression.

Mr. BROTHERS. No, sir, I am not old enough to remember it.

Mr. YOUNGER. There was a very stringent farm depression that year. I think the rails were greatly depressed that year and had a

right to do a little crying. I still can't understand, and you have not yet answered the question, as to why the rails as well as the motor carriers, should not have exactly the same rights so far as the movement of traffic is concerned. You agree in 1958 that you should have exactly the same rights to exercise your inherent advantages. If the rails are put under exactly the same trust regulations as the motor carriers, then why shouldn't they be on the same basis. That you haven't answered to my satisfaction.

Mr. BROTHERS. I am not saying we should not be on the same basis, Mr. Younger. I am a stanch advocate of equality. I believe we should be. I say insofar as agricultural commodities are concerned, we are on exactly the same basis today.

Mr. YOUNGER. How?

Mr. BROTHERS. I can buy a truck, a refrigerated van and haul exempted commodities or the raillines can buy refrigerated vans and haul the same commodities. We have the same opportunity.

Mr. YOUNGER. You already testified you would not go into that business because there is no profit in it.

Mr. BROTHERS. No sir, I didn't say that. The previous witness said that. I don't agree with him.

Mr. YOUNGER. You don't agree with him.

Mr. BROTHERS. No, sir.

Mr. YOUNGER. You think there is profit in it?

Mr. BROTHERS. Yes, sir, I do.

Mr. YOUNGER. Even if you can't get a backhaul?

Mr. BROTHERS. This is the difference. I say if the situation in the agricultural field were stabilized.

Mr. YOUNGER. What do you mean by that? How are you going to stabilize conditions in the agricultural field? Congress and every Secretary of Agriculture we have had since 1920 has been trying to do that, and we have ended up as a very miserable failure every year. What do you mean by it?

Mr. BROTHERS. Let me tell you exactly how I feel about it if I can.

First of all, this is a farmer's exemption. This exemption was put in at the request of the farm community to give them flexibility in the marketing of their products. We think it serves a purpose. We don't think it should be disturbed. We don't think the situation cries for corrective action in any way. We think raillines have the same privilege we have. But if there must be some action in this, and we don't advocate it, there are ways of doing it. The agricultural commodities could be brought under rate regulations without any requirement of entry, which would have the effect of stabilizing the rate situation. If that happened, I am certain that my company would be in a position——

Mr. YOUNGER. You are not naive enough surely to think that you could put agricultural products under rate legislation, do you?

Mr. BROTHERS. I told you, sir, I was not advocating it. I don't think it should be changed. I don't think it should be disturbed.

Mr. YOUNGER. I thought that was one of the recommendations you made to stabilize agriculture.

Mr. BROTHERS. I said if you in your wisdom think it has to be changed, then this is a way of accomplishing equity. I don't think it has to be changed. I think insofar as agricultural commodities are

concerned we have equity today. The exempt carrier is serving a useful purpose. He is serving the farm community. Obviously the farm group would not be in here protecting this exemption and they would not have been here in the first place if they didn't need it. So I don't think it needs to be disturbed. But I say if you in your wisdom say it has to be changed then you could do it by putting the farm commodities under rate regulations and still preserve the flexibility as far as equipment is concerned. There would be no requirement of entry.

I don't advocate this. This is half the story, agricultural commodities. As far as bulk commodities are concerned, you can achieve equity by repealing the bulk commodity exemptions. I have not heard anyone say that is not politically feasible.

I have not heard anyone in here drastically and vigorouly opposing that. I think it is in the public interest.

Mr. YOUNGER. Did you read the testimony last year from the water carriers?

Mr. BROTHERS. Yes, sir, I read both of these books two or three times.

Mr. YOUNGER. I think you will admit that they were in here protesting any change in the exemption.

Mr. BROTHERS. May be a few were.

Mr. YOUNGER. They were in here protesting just as strongly on changing their exemptions that you are in here arguing against changing your exemptions in exactly the same way.

Mr. BROTHERS. You know this is something that no one has mentioned here before, but I assume for the moment the rails are asking for this freedom in bulk commodities so they can compete with the water carriers. Assume for the moment, though, that you went the other way.

Under the amendment that you passed in 1958, the water carrier would conceivably still have an advantage. He may have the inherent low-cost transportation. If you go the other way, though, if you repeal the exemption, what you do is to put the railroads in the position where they can cut costs or cut their rates below cost without any restraint at the expense of the regulated commodities and at the expense of the communities who don't have water service.

Mr. YOUNGER. May I ask this. Why do you feel so strongly that the rails will produce a rate which is not compensatory?

Mr. BROTHERS. The latest reason I have is a statement Mr. Loomis made just last week before the Press Club. I think he made it very clear what they intend to do. Give us this freedom, he said, and we will cut prices to the bone and we will eliminate the big jam-up of trucks on the highway. To me that means he wants this to put me out of business. To deny the shippers.

Mr. YOUNGER. Did he state they would put in a rate that was not compensatory?

Mr. BROTHERS. Who would prevent it from doing it?

Mr. YOUNGER. That is not the question. Did he state that he would advocate a rate that was not compensatory?

Mr. BROTHERS. He said we will cut prices to the bone. I suppose that is subject to interpretation. But he followed that up with saying, and we will put the big jam-up of trucks off the highway. That to me certainly connotes a cutthroat rate war.

Mr. YOUNGER. Even people of stature sometimes make statements which they afterwards regret. That may be a statement that he made. I don't know. But I am interested, did he promise that he was going to advocate rates that were noncompensatory?

You haven't answered that yet.

Mr. BROTHERS. All I can tell you, Mr. Younger, is what he said.

Mr. YOUNGER. But he didn't say what I asked you, did he, at any time?

Mr. BROTHERS. Had he simply said we will cut rates to the bone, and stopped, I think we would agree. But when he followed it up and said, and put the big jam-up of trucks off the highway, I don't think there is any question about what the intent of the statement was.

Mr. YOUNGER. It may have been that he was advocating the piggybacks.

Mr. BROTHERS. You are entitled to your opinion as to what he meant.

Mr. YOUNGER. That would be one way, wouldn't it?

Mr. BROTHERS. I say you are entitled to your opinion as to exactly what he meant. I interpret it that he wants a license. Don't forget the territory operated in, Mr. Younger. I am directly competitive with Mr. Brosman. I am directly competitive with the Seaboard. I am directly competitive with the Atlantic Coast Line. I don't relish any uncontrolled rate war with those folks.

Mr. Hemphill knows about it, in South Carolina, North Carolina, and Virginia. A lot of those people don't have rail service. They are dependent on New Dixie for transportation; 43 percent of the traffic I handle would be subject to this unrestrained rate war. I am not certain what is going to happen to the shipping public if we get into this situation.

Mr. YOUNGER. In the territory where they do not have rail service, certainly you do have an advantage there, do you not, over the rails? They do not reach the territory.

Mr. BROTHERS. I have an advantage over them?

Mr. YOUNGER. They can't reach the territory and you can.

Mr. BROTHERS. The Certificate of Public Convenience and Necessity permits me to serve certain points that they don't serve, yes, sir.

Mr. HEMPHILL. Would you yield to me at that point?

Mr. YOUNGER. Yes, I would be glad to.

Mr. HEMPHILL. What about the volume of business that you have from those points you say are served only by truck and are not served by rail. Is the volume heavy or light in those area?

Mr. BROTHERS. I think it would be light. But I still think that the hardware store and the grocery store and the drugstore in the small community certainly is an important part of this American society. They are entitled to a public transportation system that doesn't discriminate against them.

Mr. HEMPHILL. I couldn't agree with you more. I had in mind the fact that where the business is heaviest that there are more forms of transportation. Is that generally true?

Mr. BROTHERS. Exactly, Mr. Hemphill, and this is just the point. If you pass this bill it is inevitable, where you have these large concentrations of service—motor carrier service, rail service, water service—that we are going to get into a rate war.

Mr. HEMPHILL. I think you are in one now; because, under this Supreme Court decision, while the issue is dangling there, since the courts don't have the right to go into the picture, there is really no restraint at this time.

Mr. BROTHERS. I wouldn't agree that we don't have any restraint. This case is still under consideration by the Commission. I don't know how they are going to decide it. But certainly this is so. Some restraint is better than none.

Mr. HEMPHILL. So far as your competition is concerned?

Mr. BROTHERS. So far as protecting the public interest is concerned. I don't agree that the Interstate Commerce Commission has not done a pretty creditable job. I think with the very, very complex job they have, with all the cross currents they have to resolve they do a pretty creditable job.

Mr. HEMPHILL. Thank you.

Mr. YOUNGER. Then you disagree with the previous witness who said that the ICC had not done a good job in regulating on the minimum rates?

Mr. BROTHERS. I am not certain what the previous witness said. I believe I heard him say that he thought they could have exercised a minimum rate power a little more freely than they had.

Mr. YOUNGER. I asked him point blank, and I just read the testimony again this morning, and he said, "No, I do not believe that they have done a good job."

Mr. BROTHERS. Then I disagree with him.

Mr. YOUNGER. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Keith.

Mr. KEITH. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Mr. Brothers, are you involved in the piggyback operation at all?

Mr. BROTHERS. I have a contract with the Atlantic Coast Line and the Seaboard, yes, sir.

Mr. KORNEGAY. Is that working out pretty well for you?

Mr. BROTHERS. It is a relatively new contract and it has not been used too extensively yet—not enough to develop any experience or any opinion about it.

Mr. KORNEGAY. I gather, sir, from your statement, which I would like to say is certainly indicative of your interest and the fact that you have done a lot of work, that your contention is that it is in the very area where the rails desire freedom to reduce rates that they are now suffering from lack of revenue; is that right?

Mr. BROTHERS. No, sir; that is not what I said, altogether.

Mr. KORNEGAY. Where they are losing money, such as on passenger service?

Mr. BROTHERS. That is right.

Mr. KORNEGAY. And on the transportation of bulk and agricultural commodities?

Mr. BROTHERS. No.

Mr. KORNEGAY. You say on page 13 that in the area of bulk and agricultural commodities where elimination of minimum rate control

is sought, a significant number of commodities are being moved by the rails at less than out-of-pocket cost?

Mr. BROTHERS. That is right, sir. Some of these agricultural and bulk commodities are moving at less than out-of-pocket costs.

Mr. KORNEGAY. Then you go on to say that these are areas in which the railroads seemingly hold out the prospects of further reductions, meaning that additional increases would have to be sought in other areas to make up the loss.

Mr. BROTHERS. Yes, sir.

Mr. KORNEGAY. It is in these areas that this bill would be effective, is it not true?

Mr. BROTHERS. That is correct, sir.

Mr. KORNEGAY. They are losing money on passenger traffic and hauling bulk or agricultural commodities at rates lower than out-of-pocket costs; then it is in these areas that they are presently having financial difficulties?

Mr. BROTHERS. I understand what you are saying there. Yes, sir.

Mr. KORNEGAY. Let me rephrase my first question and put it this way: It is your contention that it is in the very areas where the railroads are now experiencing financial difficulties that they seek to further reduce the rates, is that true?

Mr. BROTHERS. I think that is a fair statement.

Mr. KORNEGAY. In a recent conversation with one of my colleagues who is not on this committee, he was asking me about this bill. He said he was very much interested in it and concerned over it. He said he certainly hoped that the committee would come up with a bill that would help the railroads and not hurt the trucks.

Mr. BROTHERS. I think you can.

Mr. KORNEGAY. I am sure the committee would be interested in any suggestion you would like to make as to how we can accomplish that purpose.

Mr. BROTHERS. I told Mr. Younger how I think you can accomplish it. I think in so far as the bulk commodities are concerned, that the bulk commodity exemption can be repealed.

Mr. KORNEGAY. In other words, put all bulk transportation under regulations?

Mr. BROTHERS. Yes, sir.

Mr. KORNEGAY. How about agricultural and fishery products?

Mr. BROTHERS. Insofar as agricultural and fishery products are concerned I think we have equality today—identical equality today.

Mr. KORNEGAY. In other words, you would not advocate any change in the present situation with reference to agricultural and fishery products.

Mr. BROTHERS. No, sir. This was put in here at the request of the farm community. The farm community still insists that it be protected. I certainly agree with them. I don't think the situation cries for any correction whatsoever.

Mr. KORNEGAY. I am just asking for my own information because I don't know. Are there different areas in the transportation of agricultural products; for example, from the farm to the immediate market? I think that was the original intent of the exemption.

Mr. BROTHERS. Yes, sir.

Mr. KORNEGAY. In our complicated commercial system today, you haul it to one place and it is manufactured and transformed in some

fashion in a processing plant and then carried to a distant point. As I understand it, the exemption carries all the way through the whole system.

Mr. BROTHERS. Yes, sir.

Mr. KORNEGAY. Do you have any feelings with reference to perhaps changing or categorizing certain stages of that transportation?

Mr. BROTHERS. I refer to what you are saying as a channel-of-commerce theory.

Mr. KORNEGAY. That is a better term than I used.

Mr. BROTHERS. Once it gets into the channel of commerce it should be regulated. I agree that the exemption was put in initially to benefit the farmer moving his commodity to the market and that the exemption has gone far beyond the original intent. Certainly I agree and I would be in favor of anything that would roll back the situation to its original intent. But the facts are that no one seems to agree with me. The farmers don't agree with me, and the rails don't agree with us; so it seems impossible.

Mr. KORNEGAY. Let me ask you this question. Take a bean farmer in Georgia or Florida, he picks his beans and they are transported from the farm to a processing plant where they are frozen or canned, and then shipped from the processing plant in Florida to New York. Does the agricultural exemption extend all the way through the channels of transportation and commerce to New York under the present law?

Mr. BROTHERS. I wouldn't feel qualified to interpret every illustration as to the agricultural exemption, Mr. Kornegay. But getting back to the previous question a minute. As I pointed out, if you feel that you must do something about this so-called inequity—which I don't admit—there is a way to do it and not interfere with the flexibility of the farmer by making the agricultural products subject to rate regulations only. Make them subject to economic regulations only but no entry. This would put everybody on the same basis.

Mr. KORNEGAY. Thank you very much.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Just one question. How do you reconcile your statement on page 13 where you say that the number of commodities are being moved by the rails at less than out-of-pocket expense, and then say that the ICC is doing a good job. I thought one of the jobs of the ICC was to regulate rates to a compensatory basis.

Mr. BROTHERS. There are extenuating circumstances in many, many rate cases, Mr. Younger. I would certainly have to have the facts before me before I could feel qualified to comment on why the ICC permitted any given rate. I do think this, though. This is indicative that ICC has been extremely liberal with the railroads in establishing rates to meet the rates of the exempt carrier.

Mr. YOUNGER. You are positive that your statement that you make is correct?

Mr. BROTHERS. Yes, sir; it comes from an official study which we presented here in the record yesterday.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. What official study do you have in mind?

Mr. BROTHERS. This is study by the Interstate Commerce Commission, Bureau of Accounts, distribution of rail revenue contribution

by commodity group, 1960 statement 2–62, Washington, D.C., May 1962. This study is issued as information by the ICC.

The CHAIRMAN. Mr. Brothers, you mentioned a moment ago, that if this bill, H.R. 4700, were to be approved, 43 percent of your haul would be in danger; do I understand you correctly?

Mr. BROTHERS. Yes, sir.

The CHAIRMAN. Does that mean 43 percent of your haul is considered to be bulk commodities?

Mr. BROTHERS. I think it is possible that 43 percent of my commodities could be classified under the new definition of bulk commodities; yes, sir.

The CHAIRMAN. You made the statement yourself—I didn't. Now you say it is possible that 43 percent could be so interpreted. That is one of the things I had in mind which I appreciated your commenting on at the outset this morning, that is one of the things I had in mind yesterday, that is I want to try to develop this record on the basis of facts and viewpoints of the witnesses from the information they have, and not on possibilities or probabilities. You made the categorical statement earlier, if this bill were to be approved 43 percent of your haul would be endangered, and in trying to pin it down a little closer, you say that 43 percent might possibly be construed in that category.

Mr. BROTHERS. Let me explain why I said "possible," Mr. Chairman. We have a new definition of bulk commodities in this bill. The attorneys I have discussed this with, have different opinions as to exactly what this definition means. I am certain that if that is the case we are going to have to have some cases in the courts before we find out exactly what it does mean.

If it means what I am afraid it means, or what I think it means, 43 percent of my traffic would be subject to deregulation. This is the reason why I said "possible." It is a legal question. The attorneys differ on it.

The CHAIRMAN. It is interesting that you would start talking about a court review and litigation on something that has never yet been formulated. I am going to make the statement again that I think a lot of you should look at this thing from the standpoint of what is attempted to be done here on the basis of trying to meet the overall problem instead of being so personally interested in your own little bailiwick and operation, so to speak, that everybody ultimately would come out better. I believe in competition. I think it is the basis of our success. It has made our country great. But I don't believe in competition to the standpoint that we become narrowminded and we can't see that all of the modes are necessary and needed.

I strongly believe that the action that the Congress has taken in the past is meeting the needs of that day when the railroads had a monopoly and bringing them under regulation. Then the young embryo modes of transportation who were fighting to get along, leaving them wide open to do what was necessary in order to develop that mode of transportation. I believe the industry recognizes that in all modes. I know from your standpoint you are interested in transportation for your own company. That is natural. You should be. But I don't think there is anybody in this country that feels that we ought to let a situation go along, with new techniques and new methods, new devices, new circumstances, new conditions, to the point that we do

adversely affect the balance, and therefore the strength of the various common carriers and modes of transportation.

I have heard people in your industry, your mode and others, say in my conversation with them, that if we could give a little more thought to all of this business that is going down the highway that doesn't come under common carrier regulation, $12 or $15 billion of it, there would be more business that you can do and more than the rails can do and more than all of you can do. If you think a little bit along that line, instead of fighting among yourselves to the point that you knock each other out and let the erosion continue on all of you. That is my own thinking about this thing.

I am asking you and everybody else who comes along to help me as I try to reason out this thing.

Mr. BROTHERS. I agree with you 100 percent, sir. I agree that we should be objective. I couldn't agree with you more. I don't agree that the only interest I have in this is my company.

The CHAIRMAN. I might have been a little bit strong on that statement, but I want to say this. You and men preceding you have made some pretty blunt categorical pointed statements yourselves.

Mr. BROTHERS. You suggest that we come up with something constructive?

The CHAIRMAN. I certainly welcome that.

Mr. BROTHERS. Yes, sir.

The CHAIRMAN. I haven't seen anything constructive to meet the problem in your statement here. Yours has been entirely full of what you feel honestly and sincerely justifies you to take the position to prevent something from being done instead of meeting the whole question. If you think there is nothing that should be done, then we would be a lot better off by leaving it just like it is, I want you to say that.

Mr. BROTHERS. Mr. Harris, I think there are things that can be done. I don't think that the situation requires the drastic corrective measures that are contained in H.R. 4700. I do think there is a need for corrective action. I would like to enumerate some of them, if I might, that would help the common carrier system of this country.

I think there is a great opportunity for greater cooperation between the Federal Government and the State governments in the enforcement of the Interstate Commerce Act. We need legislation federally, and we need it locally at the State level to do this.

Right in Virginia, in my own home State, and I am chairman of a committee working on this problem with the legislature, we have permanent weight stations. If we could get the necessary statutes we could improve enforcement of transportation in Virginia.

Last year you had in the Senate language to provide the right to bring suit against illegal operations which was contained in S. 2560. I think this would be a very constructive move.

The CHAIRMAN. You mentioned that before. If we are going to go on and talk about it, let me tell you what happened last year, in my judgment. This countermove was made to prevent anything from being done, the way I had it brought to my attention in this overall picture. We can argue about that if you want to.

Mr. BROTHERS. No, sir, I am not going to argue with you. But certainly I had a lot to do with S. 2560 myself and certainly they were not my sentiments at all.

The CHAIRMAN. I know when it got underway and knew what happened. The matter was brought to my attention here time after time. I knew precisely what it was for.

We have had this thing piecemeal over the years. I have been in the middle of this since 1944 or 1945. Everything has been piecemeal. Maybe that is the way it should be done. I don't know. Maybe it is. But that is made necessary because of the sharp competitive situation that exists.

I have seen this problem of rolling back. You remember the trip leasing thing we had and the difficult time we had with it. I know we can do just what you said a moment ago, we can criticize the ICC. I have my beefs at the ICC, too. But those are personal matters. I mean by that they are matters in which I had an individual problem affecting my own constituency or my own people.

What I am trying to say here is that I would like us to get away from those personal matters, if we can, to deal with the broad problems. I could tell you about an incident in which I didn't like at all what the commission did. I think they are wrong. That is an individual instance. Here we are seeing private carriers expanding. More and better highways by the government and Congress. More private carriers. More exempt carriers. We are seeing that all along every year building up. Common carriers are missing that work.

I live in a rural area. I will say to you in all sincerity we have seen in my part of the country, as did a lot of other southerners and midwesterners, suffering over the years because we didn't have the common carriers available. They wanted to go to get the business where they have the business. They like to go from Los Angeles to New York all the time, the cream of the crop, or Chicago-New York.

That is only natural. But I say to you I don't know how much longer I am going to have here but I want to see something happen where my part of the country can have the same opportunities for transportation facilities as some big metropolitan areas of the country.

Mr. BROTHERS. I certainly agree.

The CHAIRMAN. I am setting aside a lot of personal feelings about this thing, too. So let us all do that and see if we can't come up with something that we can recoup.

How many billion dollars, $9½ billion in the gross revenues of the railroads in 1962, I believe?

Mr. BROTHERS. Yes, sir.

The CHAIRMAN. Right close to that is the trucking business. It has been testified over and over that from $12 to $15 billion of the business being transported in this country is in private carriers and exempt carriers. That is more than either one of you could handle. I don't mean to leave out the barges, but they are only doing about 6 or 7 percent of the business.

So it just seems to me that if we could get this great common carrier system going—I would like to see the industry that you represent to get all of you together on these things, instead of saying the ICC is not doing its duty because we don't like any particular decision they made. For 3 years we were after them because you had a case down there before them and it took years to settle it.

Mr. BROTHERS. I thought we were pretty close together prior to April 1962, Mr. Harris. Somehow what the rails thought was right prior to that time all of a sudden became wrong.

The CHAIRMAN. If they thought that, we will develop during these hearings what was the right part of it, and we will try to take that. If we can develop what is right, I think we can persuade the rails and ought to be able to persuade you and the rest of them to do it.

Mr. BROTHERS. I think you will find us perfectly willing to cooperate in every way possible to correct some of the problems that need correction. But we certainly don't think that abolishing minimum rate control is the correct way to do it.

The CHAIRMAN. I gathered that pretty strongly. After we had this heart to heart talk, let us go on and let me thank you for your appearance here today and your testimony. You have given us a lot of food for thought and a lot of information to consider.

Your testimony has been very helpful and we thank you.

Mr. BROTHERS. I certainly appreciate the privilege of being here. Thank you very much.

The CHAIRMAN. The next witness will be Mr. C. Austin Sutherland.

STATEMENT OF C. AUSTIN SUTHERLAND, MANAGING DIRECTOR, NATIONAL TANK TRUCK CARRIERS CONFERENCE, AMERICAN TRUCKING ASSOCIATIONS, WASHINGTON, D.C.

Mr. SUTHERLAND. Thank you, sir.

The CHAIRMAN. Mr. Sutherland, will you identify yourself for the record.

Mr. SUTHERLAND. My name is C. Austin Sutherland. I am the managing director of the National Tank Truck Carriers, Inc., a conference of the American Trucking Associations. Before I proceed with my prepared testimony I would like to introduce with your permission the two gentlemen who have accompanied me to the stand.

Mr. Fred Freund, who is the director of traffic in the American Trucking Associations and Mr. Frank Baird-Smith, who is my assistant in the National Tank Truck Carriers and formerly president of Refineries Transport & Terminal Corp. of Detroit, which was one of the largest tank truck carriers in the United States.

In your opening statement yesterday, Mr. Chairman, you outlined, if my notes are correct, five points that you would like us to direct ourselves to specifically. It is my intention to try to do just that.

But there are a certain of those points; one was what commodities would be affected by this deregulation of bulk commodities under H.R. 4700. I will go into that in detail. You asked what statutes would apply with respect to the antitrust laws. I will have to rely on Mr. Peter Beardsley of the American Trucking Associations to handle that.

I have only a speaking acquaintance with that. What effect the deregulation would have on the balance of the traffic that is not at the present time considered bulk, I will deal partly on that. The elimination between discrimination. It is my understanding that Mr. Kipp proceeded on that and I cannot talk too much on that except insofar as petroleum and other bulk liquids or dry bulk commodities are concerned. You also asked us to direct our attention to the effect of the freight bureaus and how they operated and their control or effect on the fixing of rates. I will direct some of my subsequent testimony to that subject. I am appearing in opposition to that portion of H.R.

4700 which would deprive the Interstate Commerce Commission of the right to establish minimum rates on commodities transported in bulk.

I am mighty glad we are not hauling any agricultural commodities, with the possible exception of milk. We endorse the position taken by R. L. Murphy in his testimony before this committee last year as Chairman of the ICC.

The industry that I represent is engaged entirely in the transportation of commodities in bulk, both liquid and dry. Inasmuch as this is my maiden voyage before this committee, perhaps a quick reference to my background would be appropriate.

I have been associated with the for-hire tank truck industry for 27 years. During World War II, I was Assistant Director of the Tank Truck Division of the Office of Defense Transportation. Our principal purpose was the converting of hauls under 200 miles from tank car to tank truck in order to free tank cars for the long-haul movements of petroleum from the gulf and midcontinent oilfields to the eastern seaboard. Since 1945, I have been in my present position. I am admitted to practice before the Interstate Commerce Commission, and have appeared in many cases before that body, both as counsel and as a witness.

Now, gentlemen, I am certain that none of you suspects that my appearance today is entirely without self-serving motives. Quite naturally, I am here because I want to see our industry survive. At the same time, I am certain that you, also, want to see our industry survive. I sincerely believe, therefore, that I will be serving your committee by pointing out some of the grave dangers that are inherent in this bill.

My purpose is to show you that the enactment of this measure would contribute to rapid deterioration of the tank truck industry, thus causing severe damage to the public interest, and particularly to the many thousands of shippers and small communities that rely upon over-the-road tank truck transportation.

This result will be brought about because the bill would give the green light to any carrier who chose to do so, to establish rates below out-of-pocket or direct cost for the sole purpose of driving out competition. Mr. Heineman, chairman of the Chicago & North Western Railway, in testifying before the Senate Commerce Committee on August 23, suggested—as I read his testimony—that such a predatory rate reduction could somehow be restrained by the Justice Department under the antirust laws. Even if that is so in theory, in practice, the competitor would be out of business before the court machinery could ever function. The plain fact of the matter is, that if rates are not required to be at least high enough to cover out-of-pocket costs, no railroad and no motor carrier could in practice be prevented from going as low as it might chose to go.

You may be sure that as soon as any railroad succeeded in killing off and buying its competition, it would not—or in fact could not—continue to maintain its rates at predatory levels. With competition killed off, any railroad imbued with the profit motive, which Mr. Brosnan says is true of the Southern Railway System, would seek, in the interest of profits, to restore the rates to something near a maximum reasonable level. You may be sure that any such level would

be far above that which the railroads would maintain with competition, and regulatory laws as they exist today.

In his statement before the Senate Commerce Committee of August 23, Mr. Brosnan asserts that what I have just stated would be the results if the bill were enacted, would be "ridiculous." He based his statement on the following argument:

> Under this bill, the Interstate Commerce Commission would still retain control over rate increases. It would be economic suicide for any carrier to reduce its rates below cost in order to try to corner the business. The Commission could and would break such an offender by the simple device of refusing to approve the increased rates. This threat alone is in reality the best and most powerful control.

Mr. Brosnan attributed to the Commission a function and a power which plainly it does not have an agent of the Congress under present statutes. Under this bill, the Commission would have no function or no power with respect to rates on bulk commodities transported by regulated carriers other than to fix the limit of maximum reasonable basis. Certainly, it would have no power to force a carrier to maintain rates on bulk commodities below a maximum reasonable basis so as to punish that carrier for killing off competition at any given point or points.

Mr. Brosman charges the Commission with ability to threaten regulated carriers with penalties for which there is no provision in the law.

And, I would point out at this time, that we are just as much concerned with what would happen intramode, among our own carriers, as with what would happen intermode, between the tank truck and rail carriers.

I believe that the public stake in tank truck transportation will be made clear if I give you just a few highlights of our operation. Relatively few laymen realize the variety and scope of our services. But, if you will look at the alphabetical list of commodities included in one of the major tariffs published for eastern tank truck carriers, you will find well over 700 commodities.

Yesterday when Mr. Brosnan was mentioning some of the commodities that would be affected by these bulk regulation be failed to mention petroleum products. I was stunned. This is one of the biggest single products that fall in the bulk commodity field. You will find in the appendix to my statement 34 types of acids, 27 types of alcohols, and 117 types of oils. Tank vehicles carry commodities ranging in temperature from liquid nitrogen at minus 300° F. to molten phthalic anhydride at plus 500° F. We range the gamut from liquid fluorine and oleum to orange juice and milk. We can and do carry carbon black and flour with equal facility. I have attached an appendix—I—listing many of these commodities, not including certain trade names.

The ability to carry this great variety of commodities has resulted from constant diligence to develop new and improved equipment—and the willingness to spend time, effort, and money to do so.

The tank truck industry is a venturesome, aggressive, and curious industry, made up largely, even at this date, of individual businessmen who founded, operate, and control their own companies.

I should like to discuss the staggering blow that would be struck against this industry by the deregulation of minimum rate control on bulk commodities, now exercised by the Interstate Commerce Commission.

On July 12, when your committee heard testimony from Daniel P. Loomis, president of the Association of American Railroads, Representative Schenck asked this question, quote:

> Mr. Loomis, do you feel that one of the important functions of the ICC is the responsibility to establish rates to protect the financial stability of a given mode of transportation in order to protect the public interest?

That question was asked before the last Supreme Court decision and I have not had time to digest that. All I can say now is what Mr. Loomis replied. And Mr. Loomis responded:

> No, sir. I do not think that you can say that the establishment of rates to protect a given mode of transportation serves the public interest. The public interest would be better served by letting the different modes of transportation compete, and if one mode is more efficient and can carry the products cheaper than another under fair conditions, then they should have that right and the public will benefit by it.

May I say to this committee that I subscribe to Mr. Loomis' position that, when one mode of transportation can carry commodities more efficiently and cheaply than another, it should be allowed to do so in the public interest.

This does not mean that the public interest is served by allowing a carrier to move commodities at less than his out-of-pocket cost as a means of eliminating competition.

The CHAIRMAN. I think it would be well to pause right here, if you would permit an interruption, so we can mark up No. 1, that you and Mr. Loomis are together on one thing.

Mr. SUTHERLAND. We were together on a nice panel at Dallas, Tex., and we had a lot a fun. Thank you.

Now, gentlemen, although appendix I covers several hundred commodities that we transport in bulk, I should emphasize that the movement of petroleum products is, if I may mix a metaphor, our bread and butter traffic. In fact, it is on this traffic that we built this industry.

The transportation of chemicals and various exotic commodities that are listed are recent developments, and the volume of this traffic is not sufficient to sustain the tank truck industry as an effective and efficient mode of transportation.

In 1950, the railroads embarked on a program to increase their share of petroleum transportation by seeking a rate umbrella of 1 to 1½ cents per 100 pounds under the prevailing tank truck rate.

In other words, they attempted to have the Interstate Commerce Commission to freeze our rates at a cent and a half a hundred pounds above the railroad rate. They didn't call it a rate umbrella at that time when it applied to them. They called it a service deficiency. I agree with their definition but I don't agree with the process they used to have it done. Over a period of 7 years, a number of rate proceedings were instituted toward this end; but, rather than take your time with detail, I have listed them in an appendix—II. All of these cases were similar; and, almost without exception, they were decided on the question of the low-cost carrier.

I commend this appendix to you for your analysis in the light of testimony of railroad witnesses to the effect that the Commission has not permitted them to reduce rates where they have been shown to be the low-cost and most efficient mode of transportation.

The tank truck carriers were found to be the low cost carriers on the shorter hauls, and the rails were denied the right to put their rates below the tank truck carriers' rates on these short hauls, and thereby circumvent the low-cost advantage of tank trucks at these distances.

I might ad lib here, Mr. Chairman, that I was a witness in each one of these cases. We have a lot of money invested in them.

It is important to note that, not once throughout these proceedings, which involved almost every area of the United States, was any question raised concerning the unregulated transportation of petroleum products in bulk by water carriers, and that is substantial. Yet, these cases involved territories served by the Mississippi and Missouri Rivers, their tributaries, the Great Lakes and the inland waterways. Apparently, from 1950 to 1957, the unregulated transportation of bulk commodities by water carriers was of no concern to the railroads.

In any event, I am sure that neither the members of this committee nor anyone interested in the preservation of the U.S. transportation system would condone the establishment, by any mode of transportation, of rates below out-of-pocket costs.

As to the matter of efficiency, which Mr. Loomis mnetioned in his response to Representative Schenck, I might point out that the average turnaround time of a tank car in the United States today is about two trips a month. In other words, one tank car today in the average rail haul will produce only about 24 trips per year. If the tank truck industry had to live on such an inefficient basis, we wouldn't be up here testifying.

About the only significant development since World War II in railroad equipment for moving bulk liquids has been the king-size tank car, with capacity up to 20,000 and, in some cases, 30,000 gallons.

They are now experimenting with a 50,000-gallon tank car. We call these frameless tank cars; the support between the two trucks of the car is provided by the shell itself. And, ironically, the tank truck industry developed this type of tank trailer equipment back in 1936–37.

It has been the policy of our association not to oppose rates published by the railroads on king-size tank cars because their unit cost—because of their size—has been so reduced that we consider it an element of progress, just as we consider our own increased capacity an element of progress.

But, let's have a look at the results of those long, tedious rate proceedings, on which thousands upon thousands of dollars were spent to determine a principle; namely, that the low-cost and more efficient agency should be able to take advantage of its position in its respective mileage bracket, be it rail or truck.

We start with 1950, and consider the bread and butter commodities of the tank truck industry—petroleum products. Taking gasoline, for example, we find from ICC figures that the 1950 revenue derived by the railroads for transporting this product from all U.S. points to all U.S. points ranged from 141 to 157 percent of out-of-pocket costs.

If you turn to my appendix 3, I have this in table form so that you can follow it in detail. By 1955, the ratio had shrunk considerably: revenue ranged from only 119 to 127 percent of costs.

Now, it was during this period you will recall, that the railroads were getting their way as to rates in the areas and mileage brackets in which they established themselves—at least in the minds of the Commission—as the low-cost agency.

I would like to insert a personal observation here, if I may. I sat here last year and listened to a great deal of the testimony in the rate cases and one of the horrible examples that the railroads held up before this committee was the Commission's decision in the so-called *Friendship* case which you will find listed in the appendix. That is the first time I ever knew that we won it. We thought it was one of the worst beatings we had ever taken.

So let us move ahead another 5 years, to 1960 and see what has happened. And please bear in mind that there have been no major rate adjustments as to petroleum since the cases to which I referred. There have been some spot adjustments, but none of territorial or widespread scope.

Well, when we refer again to ICC records, we find that the 1960 railroad revenue for hauling gasoline from U.S. points to U.S. points ranged from as low as 90 percent of costs to 98 percent.

In an appendix—III—to this statement, I have set forth in detail the revenues which petroleum products contributed to the out-of-pocket costs for the handling of this traffic. These figures are based on the ICC 1-percent waybill sampling, and I have omitted all movements of less than 100 carloads within or between rail ratemaking territories.

What these figures show is that, even now—when there is minimum rate regulation—the railroads are hauling petroleum products below out-of-pocket cost. What would happen without regulation in the railroad war against truck transport? As a matter of fact, what is happening now to the principle that the public interest is best served by having commodities moved by the low-cost, efficient agency—a principle to which Mr. Loomis professes to subscribe?

If the ICC were denied its power to regulate minimum rates, it is my firm conviction that the tank truck carrier could stay in business only long enough to cannibalize his equipment. We feel certain that the railroads would act to drive this rival carrier out of the field by naming rates even further below their out-of-pocket costs than some of them are even now. I base this statement on our experience, and I can offer an illustration.

In November 1959, the railroads proposed reduced rates on gasoline and fuel oil from Watertown, S. Dak., to certain named points in North and South Dakota, and between the twin cities of Minneapolis and St. Paul to certain named points in Wisconsin. They attempted, by these rates, to have the Commission approve a rate umbrella of 1½ cents per hundred pounds under the tank truck rate.

Our association and the members in the affected territories protested to the ICC on two specific grounds: (1) That the proposed rates were below the out-of-pocket costs of the railroads and, (2) they constituted a destructive competitive practice because the higher cost rail transportation was seeking the protection of a rate umbrella in competing with the lower costs of motor transportation. The Commission suspended and assigned the proceeding for handling under modified procedure. Under that procedure the railroads, who were the respondents in the proceeding, filed a written statement of facts which constituted their justification for the reduction. Thirty days later the protestants, that is, the tank truck carriers, submitted the facts which they relied upon in support of their protest. The railroads in their opening statement, as have the railroads in their appearance before this committee relied on their right to maintain such

rates as within their managerial discretion, deemed necessary to take the traffic away from a competitive mode. On the basis of broad generalities, they represented to the Commission that the rates were above the direct or out-of-pocket cost incurred in the performance of the service.

We employed an independent cost consultant to prepare evidence as to the actual rail costs when developed under ICC's rail form A. This is a recognized cost formula which has been used by the Commission, shippers, and railroads for many years. It is set forth in Senate Document No. 63 entitled "Rail Freight Service Costs in the Various Rate Territories Throughout the United States."

It is the cost formula which the Commission itself used in the Class Rate Investigation (Docket No. 28300) which lead to the elimination of the high differential in class rates which the railroads years ago imposed on southern shippers and receivers of freight.

As this committee undoubtedly knows, the *Supreme Court in New York* v. *U.S.* (331 U.S. 204, 67), (1947) approved the Commission's use of this formula in supporting its conclusions that the South should not be subjected to a higher class rates than the railroads maintain in Northern territory. While Mr. Brosnan referred to rail costs when developed by this cost formula as "mumbo jumbo," that has not been the attitude of either of the shippers or carriers generally in cases involving rate to cost relationships.

We presented our cost evidence in our reply statement. Taking the shortest and longest distant points involved in the case to illustrate my point, we showed costs and rate relationships as follows: (Bear in mind that rates and cost are stated in cent per hundredweight.)

From Watertown, S. Dak., to Fullerton, N. Dak., a rail distance of 184 miles, the existing rail rate was 24 cents on gasoline and the proposed rail rate was 20 cents. The existing truck rate was 21.5 cents on gasoline and 25 cents on fuel oil.

The difference in rate between the gasoline and the fuel oil comes about by the difference in weight of the two commodities. The highway distance was 153 miles for which the tank truck out-of-pocket cost in round figures was 21 cents. For the railroad at the rail distance (184 miles) the out-of-pocket or direct cost was 32.5 cents when based on the cost incurred in the handling of the very lightweight trains on the branch lines on which this destination was located. Even on the basis of higher average weight trains operated on the rail system as a whole, rail form A showed the out-of-pocket cost to be 25.1 cents. Even at this out-of-pocket cost the rails proposed a 20-cent rate.

The longest haul destination involved Pollack, S. Dak., the rail route passing through North Dakota for a total one-way haul of 314 miles. The existing rail rate was 42 cents and they proposed a reduced rate of 28.5 cents. The highway distance was 216 miles and the truck rate was 29.8 cents on gasoline. The tank truck out-of-pocket cost for the 216-mile distance was 26.2 cents.

The rail cost for this haul at the rail distance was shown as 47.6 cents considering the lightweight trains operated on the branch line service involved. Here again, if we use as the cost basis the system's average weight trains, the rail out-of-pocket cost was shown as 33.6 cents for which they proposed a rate of only 28.5 cents. Thus, in order to achieve as near as possible the 1½ umbrella under the tank truck rate

the railroad proposed a rate more than 5 cents below their lowest possible cost.

After our reply statement and evidence was submitted, the railroads petitioned the Commission to withdraw the rates and discontinue the proceedings.

We opposed the discontinuance because we wanted to give the Commission an opportunity to find that the existing rail rates were below out-of-pocket costs and should, in order to be lawful, be increased. The Commission authorized the railroads to withdraw the rates on the ground that the only question before it was the lawfulness of the reduction and that the question became moot when they offered to withdraw the reductions.

I have given you this in some detail because it illustrates clearly and in specific terms what the railroad would and could do if not restrained by the Commission's minimum rate power.

If this proposed legislation had been law when these rate proposals were made, the rates would have gone into effect—even though they were below the railroads' out-of-pocket costs, and the tank truck carriers operating in that territory would have been eliminated from this business.

Give the railroads this rate-cutting freedom, and it wouldn't be long before this kind of thing would be undertaken throughout the continental United States on petroleum and other bulk commodities.

And petroleum is not the only thing on which we have had these bulk commodity rate controversies, although our greatest traffic is in petroleum, including petrochemicals. Our second largest customer is the chemical industry, whose products include the exotic fuels used in rockets and missiles.

I might ad lib here for the benefit of the committee—the Chairman asked—you wouldn't be hauling some of these bulk commodities from New York to Los Angeles. I might say we are hauling some of these exotic fuels for use in the missile program from Cape Canaveral to Vandenberg Air Force Base in southern California, and we are hauling them 400 degrees below zero all the way.

The CHAIRMAN. That is a special haul.

Mr. SUTHERLAND. It certainly is. It is noncompetitive and I am quick to admit it. But it is possible to do. Third is the cement industry. And, fourth is agriculture, including such products as vegetable oils, soybean oil, et cetera—but not those commodities covered by the present agricultural exemption, with the possible exception of milk.

In the soybean oil field, the railroads have conducted unceasing warfare against us, notwithstanding the Commission's ability at present to control minimum rates.

During the last several years, the railroads took rate increases amounting to more than 86 percent on the transportation of vegetable oils throughout the United States. But, during this same period, they noticed that tank trucks were beginning to edge into this business, mostly in the Southwest.

So, in 1958, when the tank trucks had less than 10 percent of the vegetable-soybean oil business, the railroads started cutting their rates on these commodities by 30 to 40 percent in selected areas where there was competition—even while they were getting higher rates elsewhere.

They made no attempt to cut these rates where there was no competition.

What was the result? Between 1957 and 1960, the railroads increased their tonnage on soybean oil by 41 percent—but their revenue by only 3 percent. Actually, their only gain was a partial destruction of tank truck competition.

Even then, they weren't satisfied, and began a campaign to squeeze out the remaining tank truck movement. Since December 1961, rates have been cut on several hundred movements in five rate-cut actions. I have listed the various proceedings in another appendix—IV.

There is no way the rails can recover their losses from this traffic except at the expense of other shippers, other merchandise or other commodities. This is borne out by 86 percent in rate increases that I have mentioned.

Another significant illustration is found in the transportation of bulk cement. This is relatively new to the tank truck industry, having developed mainly in the last 3 or 4 years; but its growth has been phenomenal.

I may say we hauled cement in southern California a long time ago but over all United States it has been in the past 3 or 4 years, Mr. Younger. As this growth has continued the railroads, in desperation, have cut their rates all the way to 40 and 50 percent. In most cases, the ICC has allowed these cut rates to go into effect; in others, it has suspended them.

Right now, there is a proceeding before the ICC involving cement transportation in the southern territory, where the rails cut the rates 40 to 50 percent—only after they became aware that they had competition from tank trucks.

The evidence at these hearings—and this, of course, is strictly my own interpretation—indicates that the railroad rate proposals are under their out-of-pocket costs up to 150 miles. The case is still pending before the ICC.

The significant point in connection with this southern cement proceeding is this: for years and years, the railroads had practically all of the cement business, for reasons which I won't go into at this time. And, during these years, they made no move to reduce their rates—to give shippers the benefits of the so-called efficiency and low costs which they want you to believe they can offer. Instead, they took a series of increases between 1928 and 1954.

Not until they had competition from tank trucks did they make any effort to reduce their rates. And, incidentally, even since they started these proceedings, they haven't introduced any testimony to show that exempt water transportation is a competing factor.

Now, my purpose, gentlemen, in citing these rate cutting examples in petroleum, soybean oils, and cement, is to point out that the railroads don't seem to agree with the principle enunciated by Mr. Loomis when he told you, quote:

> If one mode (of transportation) is more efficient and can carry the products cheaper than another under fair conditions, then they should have that right and the public will benefit by it.

These are noble words, but the railroads have shown, and I have given you examples, that their purpose is to establish whatever rates are necessary to destroy competition. It matters not whether these

rates are below cost. When an umbrella serves their purpose, they ask for one. When it doesn't, they say umbrellas are evil.

The widely publicized theory that the railroads are the low cost and most efficient mode of transportation for all commodities has been repeatedly demonstrated to be fiction.

In case after case before the Interstate Commerce Commission, the tank truck carriers have shown that, in many circumstances, they are the low cost and most efficient mode of transportation.

This bill would deregulate 70 percent of the railroads' tonnage and 50 percent of their revenue. It would deregulate 100 percent of the traffic in which railroads compete with us. And, Mr. Loomis has made it plain to you that this is just a start—that he hopes that all minimum rate regulations will be eliminated.

I might apply that hundred percent would apply to all of it.

This may sound fine to shippers and the public. We are told that many of the regulatory provisions were set up when there was a monopoly in transportation; but, now, there is no longer a monopoly, so we no longer need regulation.

Gentlemen, to me, this kind of reasoning overlooks the fact that we have no monopoly because there is regulation. It is like a man having his store robbed, so he puts in a burglar alarm; and the robberies stop, so he takes out the burglar alarm.

We are accused of trying to avoid competition. The fact is that we want to preserve competition—with some rules of the game, instead of anarchy.

Can anyone have any illusions about what happens when you have unregulated competition? Has anyone forgotten what happened in the late 1800's when John D. Rockefeller was getting concessions from the railroads—not only on the oil they hauled for him but on the oil they hauled for others?

I might ad lib right there—there has been an excellent book called "John D. Rockefeller's Secret Weapon." His secret weapon back in the 1800's is the fact that he owned all the tank cars in the United States and dished them out as he saw fit. That is what brought about the enactment of the Interstate Commerce Act and some of the factors in respect to regulation. My colleague here, Mr. Baird-Smith, was a part author. And these kickbacks were just one example of the chaotic conditions that existed in transportation before we had regulation. Everywhere, there was favoritism for the big shipper, discrimination against the little fellow, under-the-table deals, and the-devil-take-the-public.

Indeed, as we all know, these were the very conditions that brought about the enactment of the Interstate Commerce Act back in 1887. Now, it is proposed that we turn back the clock 75 years—that this will be in the public interest.

In those earlier years, petroleum transportation was the sorest spot in predatory practices. It also has the greatest potential for evil if rate deregulation is approved.

Remember, gentlemen, that the oil industry deals in tenths of a cent per gallon, and transportation is a prime factor in costs and prices. The price of a suit of clothes—whether you paid $75 or $175—has little relationship to what it cost to move it from where it was made to where it is sold. But the gasoline you burn in your car

and the fuel oil you burn in your home are extremely sensitive to transportation rates. Business is won and lost among oil companies on tenths and even hundredths of a cent per gallon. And, traffic has been shifted from one carrier to another on these same fractional margins.

I have seen traffic shifted from tank truck to rail or vice versa when the total difference on the whole tankload of gasoline was less than 10 cents. It was just the way the cards dropped out of the IBM machine. If you saw the July 23 issue of Oil Daily, which was a petroleum economics issue, you noticed statements by presidents of our leading oil companies and trade associations. The substance of their comments is that production and sales are at record levels, but that the squeeze on profits has resulted in the poorest price structure in years.

Among the basic causes of the profit squeeze are the murderous price wars that have been going on. In a more recent issue of Oil Daily—the one for August 10—an independent oil distributor charges that successive gasoline price cuts have been initiated by the major companies to drive the small distributors out of business. He wants the Justice Department to investigate. I don't know if they did.

Now, the petroleum industry is one of the biggest bulk shippers of any industry today, with a commodity that is highly sensitive to cost changes. Isn't it clear that deregulation of bulk commodity rates would play havoc with this industry—an industry that deals in tenths and hundredths of a cent—an industry that is basic to our national well-being and our national defense?

Transportation rates will dictate what petroleum will move, who will move it, and what oil company will get the business. During the ICC Chairman Murphy's testimony, Representative Hemphill likened rate wars to gasoline price wars. (P. 274, transcript of testimony, July 10, 1962.)

Nothing would contribute more to gasoline price wars than uncontrolled minimum rates on bulk commodities. Gasoline price wars have driven prices way below cost, and the same would be true of transportation rates on bulk commodities—including gasoline.

It might seem, at first glance, that a transportation rate war would help petroleum shippers. But as you gentlemen know, rate wars are temporary things. And, when carriers—like all other businesses—lose money on one operation, they have to get it back on another.

And, who would benefit from less-than-cost shipping rates—little shippers and little communities, who don't have large volume shipments to offer? Of course not; the gains would be reaped by big shippers and big communities.

I want to emphasize what I say following here. First, if the deregulation of this minimum rates on bulk commodities becomes law, heaven help a town under 5,000 population insofar as petroleum production, gasoline, and fuel oil are concern. In our own tank truck industry—forgetting the railroads as competitors for a moment—we are right now under pressure from large shippers to give them what are politely known as incentive rates, or volume-tender rates. This is based on the principle that the shipper of a large volume between two given points is entitled to a lower rate than the small shipper.

It is also based on the principle that the bigger city—the bigger consumption—is entitled to a lower rate than a small town with a small consumption, distance being relative. In behalf of the proposal to deregulate bulk commodity rates, it is noted that certain water carriers, hauling three or less bulk commodities, are exempt from minimum rate control. Therefore, it is stated, communities that are located on rivers or inland waterways are at a disadvantage, compared to those that are so located.

To me, this is somewhat like saying that every town in the United States that is without a pipeline outlet is at a disadvanage compared to those that have such an outlet.

It seems obvious to me, gentlemen, that if you deregulate bulk commodities hauled by all forms of transportation, the small communities, the small shippers, the small distributors, and the small jobbers will be far more severely injured than they could be by exempt bulk commodity movement by water.

Any benefits that might accrue to them from the ruthless, ruinous rate warfare that this bill would touch off would be of short duration, indeed.

As I have stated before, we subscribe fully to the principle that the carrier which can move commodities most efficiently at the lowest cost is entitled to that business. But we consider it indisputable that, without minimum rate regulation, the more powerful carriers can and will offer rates below out-of-pocket cost—only long enough to drive out competition. This, I believe, was clearly illustrated in the *Watertown* case. And, I repeat, we are concerned not only with this kind of practice by the large railroads, but also by members of our own industry.

As to the railroads, alone: Without minimum rate regulation, think of the bargaining powers they would have with shippers of both bulk and packaged freight—powers which the tank truck carriers would not have. This to us, cannot be called equality of treatment.

The public is entitled to the preservation of the low cost, efficient transportation agency against below-cost predatory rate cutting. This can be prevented only by continuance of ICC control over minimum rates.

We—the tank truck carriers—are not exempt from minimum rate controls. Unlike the railroads, we have never asked for any exemption. We dont' want it.

In brief, we do not oppose this bill because it would stimulate competition, but because it would eliminate it.

I know that this committee does not want our industry to collapse, because you know that we are an essential industry. You remember, I am sure, how the utilization of the limited number of tank trucks available during World War II made it possible to transfer approximately 74,000 tank cars to petroleum movement to the eastern seaboard—an achievement that enabled us to overcome the grim ravages of German submarines.

Two things made this possible: First, there were more than 20,000 idle tank cars, rusting on railroad sidings in various parts of the country; second, we converted all possible hauls under 200 miles from rail to tank truck. A report from the Office of Defense Transportation on

Civilian War Transport has this to say of the then present tank car situation—I quote:

> Although many were rusting on sidings or being used for storage, they were in existence, and there was a surplus. The big question was whether these cars, averaging at least 18 years of age, could stand the strain of long haul operation from the Southwest. As a test, 20,000 were pressed into service transporting crude oil from producing regions of the Southwest to the eastern refineries * * * In August 1943 a peak of 74,000 cars was reached.

I had a part in that and I am proud of it. Today there is no large surplus of tank cars for two reasons:

(1) An enormous increase in crude oil production and refining with its corresponding increase in transportation requirements and (2) a radical change in the use and distribution of tank cars.

In 1940 just before the outbreak of the war, the average daily crude oil runs to the still were just under 3,610,000 barrels. Today it is around 8,500,000 barrels—a gain of nearly 5 million barrels per day.

In 1943, the first year in which the ICC figures were available, there were 125,143 privately owned tank cars in petroleum service and 10,834 tank cars in other services, such as the transportation of chemicals, for a total of 135,977 tank cars.

Present ICC figures for 1960 reveal that notwithstanding the 5 million barrels per day of increase in crude oil runs, there are only 78,055 tank cars in petroleum service and 80,924 in chemical and other service, for a total of 158,979 cars.

I might insert here, in the tank car field, the railroads do not own these tank cars. They have no control of the distribution of their use. They are wholly in the hands of the shipper insofar as their use in distribution is concerned. This increase of tank cars is in no way in proportion to the tremendous increase in petroleum and chemical production, and transportation requirements.

I am sure you are aware of the role we are now playing in moving petroleum products for the military establishment, and in transporting the exotic fuels for our missile and rocket program. So, there is no doubt that tank truck transportation is essential to national defense.

We cannot destroy this industry and then say, in case of a national emergency, "put it back on the road," just like turning out some motor vehicles and putting them into operation. We are a highly skilled industry, with highly trained personnel, and advanced techniques and specialized equipment developed through years of research. These things cannot be replaced overnight.

I would like to call your attention to the pictorial appendix that I attached to my exhibit, an article appearing in the Petroleum Chemical Transporter of July 1962, which pictorial illustrated the wide range and diversity of the tank truck industry.

(The pictorial appendix may be found in the committee files.)

We do not seek a rate umbrella protection against the railroads—such as they sought for themselves. We are willing to compete with them on a cost-versus-cost basis, efficiency-versus-efficiency basis, or value-of-service versus value-of-service basis.

But, gentlemen, I have been associated for years with the development of rate structures on bulk commodities in this country, and, for the life of me, I can't see how the various transportation agencies can

remain solvent—or at least within their out-of-pocket costs—unless there is regulation of their minimum rates.

Thank you very much.

(The appendixes of Mr. Sutherland follow:)

APPENDIX I. STATEMENT SHOWING PARTIAL LIST OF BULK COMMODITIES HANDLED IN INTERCITY TANK TRUCK TRANSPORTATION IN INTERSTATE AND INTRASTATE COMMERCE

LIQUID COMMODITIES (TRADE NAME OMITTED)

Acetal
Acetaldehyde
Acetic acid
Acetic anhydride
Acetone
Acetone cyanahydrin
Acetone oils (Ketone oils)
Acetonitrile
Acetylacetone
Acetly chloride
Acrolein
Acrylic esters
Acrylonitrile
Allyl alcohol
Allyl chloride
Allyl mercaptan
Alum
Aminoethyl ethanolamine
Ammonia, anhydrous (liquefied)
Amyl acetate
Amyl alcohol, normal
Amyl alcohol, refined
Amyl amine
Amyl chloride
Amyl mercaptan
Amyl phenol
Aniline oil
Aqua ammonia
Asphalt
Benzaldehyde
Benzene
Benzoyl chloride
Benzyl acetate
Benzyl alcohol
Benzyl chloride
Bromobenzene
Butadiene
Butane
Butyl acetate, normal
Butyl acetate, secondary
Butyl acetoacetate
Butyl alcohol, normal
Butyl alcohol, secondary
Butyl alcohol, tertiary
Butyl aldehyde, normal
Butylamine
Butyl ether
Butyl lactate
Butyl methacrylate
Butyric acid
Butyric anhydride
Butyric ether (ethyl butyrate)
Calcium bisulfite solution
Caprylic acid
Carbolic acid (phenol)
Carbon dioxide (—50° F.—liquefied)
Carbon tetrachloride
Casinghead gasoline
Castor oil
Caustic soda
Chloral
Chlorine (liquefied)
Chloroacetic acid
Chloroacetone
Chlorobenzene
Chloroform
Chloronaphthalene oils
Chloroprene
Chlorosulfonic acid
Coconut oil
Codliver oil
Copra oil
Corn oil
Corn syrup
Cottonseed oil
Creosote
Cresol
Cresylic acid
Crotaldehyde
Crude oil
Cumene
Cyclohexane
Cyclohexanol
Cyclohexanol acetate
Cyclohexanone
Decahydronaphthalene
Decylaldehyde
Diacetone alcohol
Diamylamine
Dibutyl phthalate
Dibutyl sebacate
Dicvhlorobenzene
Dichloroethylether
Dichloroethylene
Dichloropentane
Diesel fuel (approx.)
Diethanolamine
Diethylamine
Diethyl benzene
Diethyl carbinol
Diethyl carbonate
Diethylene ether (dioxane)
Diethylene glycol
Diethylene glycol diethyl ether
Diethyl phthalate
Diethyl sufate
Dimethyl amine
Dimethyl ether
Dimethyl phthalate
Dimethyl sulfate
Dioxane (diethylene ether)
Dipropylene glycol
Divinylbenzene
Dodecene

Epichlorohydrin
Ether
Ethyl acetate
Ethyl acetoacetate
Ethyl alcohol (ethanol)
Ethyl acrylate
Ethyl butyl alcohol
Ethyl butyl keptone
Ethylene (32° F.)
Ethylene chlorohydrin
Ethylene cyanohydrin
Ethylene diamine
Ethylene dichloride
Ethylene glycol
Ethylene formate
Ethyl hexyl alcohol
Ethyl hexyl acetate
Ethyl methacrylate
Ethyl methyl ketone
Ethyl oxalate
Ethyl silicate
Fluosilicic acid
Formaldehyde
Formic acid
Fuel oil
Furfural
Furfuryl alcohol
Fusel oil
Gasoline
Glycerine
Glycol diacetate
Glycol diformate
Heptane
Hexaldehyde
Hexane
Hexyl alcohol (hexanol)
Hexylamine
Hexylene glycol
Hydrazine
Hydrochloric acid
Hydrogen peroxide
Isoamyl alcohol
Isobutane
Isobutyl acetate
Isobutyl alcohol
Isobutyl aldehyde
Isobutyl amine
Isobutyl carbinol
Isobutyl propionate
Isooctane
Isopentane
Isophorone
Isopropyl acetate
Isopropyl alcohol
Isopropyl ether
Jet fuel
Kerosene
Ketones
Lactic acid
Lard oil
Latex
Lauryl alcohol
Linseed oil
Liquefied petroleum gas
Menhaden oil
Mesityl oxide
Methacrylate polymers
Methyl acetate
Methyl acetoacetate
Methyl acrylate
Methyl alcohol
Methyl amyl acetate
Methyl amyl alcohol
Methyl amyl carbinol
Methyl cyanide
Methylene chloride
Methylethyl ketone
Methyl formate
Methyl isobutyl ketone
Methyl propyl carbinol
Methyl propyl ketone
Milk
Mineral spirits
Molasses
Motor fuel antiknock compound
Muriatic acid
Naphtha
Naphtha solvent
Neatsfoot oil
Neohexane
Nitric acid
Nitrobenzene
Nitroethane
Octyl acetate
Octyl alcohol (octanol)
Octylaldehyde
Oil, fuel No. 2 or 3
Oil, fuel, No. 4, 5 and 6
Oil, lubricating
Oleic acid
Olive oil
Palmitic acid
Palm-nut oil
Paraldehyde
Peanut oil
Pelargonic acid
Pentane
Perchloroethylene
Petroleum ether
Phenol
Phorone
Phosphoric acid
Phosphorus oxychloride
Phosphorus trichloride
Polyvinyl alcohol
Potassium silicate solutions
Propionic acid
Propyl acetate
Propyl alcohol
Propyl aldehyde
Propylene chlorohydrin
Propylene dichloride
Propylene glycol
Pyridine
Red oil
Sodium silicate
Soybean oil
Spent acid
Stearic acid
Stoddard solvent
Styrene
Sulfur (molten)

Sulfur chloride
Sulfuric acid
Sunflower oil
Tall oil
Tallow
Tar
Terebene
Terpineol
Tetraethylene glycol
Titanium tetrachloride
Toluene
Toluidine
Tributyl phosphate
Trichlorobenzene
Trichloroethylene
Trichlorosilane
Triethanolamine
Triethylamine
Triethylene glycol
Tung oil
Turpentine spirits
Turpentine substitutes
Undecanol
Urea solutions, average
Varnish
Vinyl acetate
Vinyl chloride
Vinyl ether
Vinyl methyl ether
Water
Whisky
Xylene (xylol)
Xylidine

LIQUID PROPELLANTS USED BY THE MILITARY

Alkyl boranes
Aniline
Chlorine trifluoride
Ethylene oxide
Fluorine
Fuming nitric acids
Hydrocarbon fuels
Liquid hydrogen
Liquid nitrogen
Liquid oxygen
Nitrogen tetroxide
n-Propyl nitrate
Perchloryl fluoride
Unsym, dimethylhydrazine

DRY BULK COMMODITIES

Aggregates
Alfalfa meal
Alfalfa pellets
Alumina oxide catalyst
Aluminum chloride
Aluminum sulfate
Ammonium nitrate
Ammonium sulfide
Blood, dry
Bone meal
Buttermilk, dried
Calcium carbide, dry
Calcium carbonate
Calcium chloride
Calcium hydroxide
Calcium oxide
Carbon black
Catalysts
Caustic potash
Caustic soda
Cement
Charcoal
Chlorinated camphene
Clay
Coke ash
Copper concentrates
Corn products
Cottonseed meal
Defoliants
Detergents
Dicalcium phosphate
Feeds, animal, poultry, mill
Ferrophosphorous
Feldspar, ground
Fertilizer
Fish meal
Fluorspar
Flour
Fly ash
Fuller's earth
Fungicides
Grain
Gypsum
Herbicides
Insecticides
Kaolin
Lime, hydrated
Lime, quick
Limestone, ground or crushed
Magnesium carbonate
Magnesium hydroxide
Magnesium oxide
Magnesite
Maganese dioxide concentrates
Meal, safflower
Mortar
Perlite
Phosphate rock, crushed or ground
Phosphates, defluorinated; super
Phosphates, super, and triple
Plastic granules
Polyethylene plastic pellets
Potash
Potassium silicate
Potato flour
Pyrite cinders
Resins
Rice flour
Roofing granules
Rosin
Salt (sodium chloride)
Salt compounds
Saltcake
Sand

Silica, colloidal
Silica gel catalyst
Silica flour
Silica products
Slate, ground
Soda ash
Sodium bicarbonate
Sodium chlorate
Sodium montmorillinite
Sodium phosphate
Sodium silicate
Sodium sulfhydrate
Soybean meal
Starch
Stone
Sugar
Sulphate of soda
Talc, whiting
Urea
Volcanic ash
Whey
Woodchips
Woodflour
Zinc oxide

APPENDIX II. PRINCIPAL RATE CASES IN WHICH TANK TRUCK CARRIERS, INC., PROTESTED OR COMPLAINED AGAINST REDUCED RAIL RATES ON PETROLEUM PRODUCTS

I & S 5710

Petroleum in Southern Territory, Rail, 278 ICC 323 (Division 3, 1950) and, on reconsideration, 280 ICC 755 (entire commission, 1951) was an investigation proceeding.

Affected territory.—The proposed rates applied from southern origins to all southern destinations within 200 short-line miles of the 80 named origins.

Commodity application.—The proposed rates applied on fuel oil, gasoline, and "other refined petroleum products" in tank carloads.

Level of rates proposed.—The proposed rates were based upon mileage scales which had been constructed to "reflect differences in conditions affecting the cost of motor transportation" in different sections of the South. (278 ICC 325–26.) On the average, the proposed rates were 1.3 cents lower than the rates of for-hire motor carriers between the same points. The proposed rates graded up into the level of the preexisting rates in the mileage block 150 to 200.

Basis for reduction.—The railroads cited their declining participation in the transportation of petroleum products and relied upon the testimony of certain shippers that their rates must be 1 to 1½ cents less than truck rates in order to permit rail participation in the movement.

Commission holding and basis therefor.—The division report found the proposed schedules not shown to be just and reasonable, but also found that the railroads had justified rates not lower than a mileage scale specified in the report. The approved mileage scale reflected increases of ½ to 1½ cents over the proposed scale for distances up to 65 miles. This was based upon the Commission's conclusion that motor transportation had the inherent cost advantage for distances up to about 50 miles and that the proposed rates for such distances were only slightly higher, if any, than out-of-pocket costs. For distances greater than 65 miles the approved scale was somewhat less than proposed. Upon reconsideration, the Commission, noting that the railroads had not taken advantage of the order permitting reductions in mileage blocks over 65, concluded that for such distances the rates previously approved were lower than necessary to meet the competition. Accordingly, it modified its order by raising the level of the approved scale for distances in excess of 65 miles to the level which had been initially proposed and subsequently maintained. This had the effect of reducing the spread of the approved rail rates under the truck rates to less than 1.3 cents.

In *Atlanta & Saint Andrews Bay Ry. Co.* v. *United States*, 104 F. Supp. 193 (USDC Alabama, S.D. 1952) the Commission order in I & S 5710 was permanently enjoined upon the ground that it appeared to require rail rates which "were on the average well above the truck rates" (p. 200). This determination was based upon the face of the report which found that the rail rates initially proposed were about 1.3 cents lower than the truck rates while also stating that the rate scale approved upon reconsideration was appreciably higher than the rates initially proposed for distances over 65 miles.

ARIZONA-NEW MEXICO CASE

Petroleum Products from Los Angeles to Arizona and New Mexico, 280 ICC 509 (Division 3, 1951) was an investigation case in which NTTC was not a party. The suspended rail rates in some instances equalized motor carrier rates and in other instances was from 1 to 10 cents below such rates. Diversion to tank truck

transportation was cited as justification of the rates. Shipper testimony that the reduced rate would prevent "further increases in private movement by the oil companies themselves" was also relied upon (p. 516). The Commission found the reduced rates unlawful to the extent less than rates made 2 cents lower than comparable motor carrier rates. The basis for the finding was a general reference to the need of the shipping public for both motor and rail transportation.

Petroleum, Los Angeles and El Paso to Arizona and New Mexico, 287 ICC 731 (entire, 1953) was an investigation proceeding into reduced rail rates which disturbed the relationship prescribed in the 1951 case. The reduced rates applied on refined petroleum products and distillate fuel oil from Los Angeles, Calif., group 22 shipping points, and El Paso, Tex., to Phoenix and Tucson, Ariz., and intermediate and related points in Arizona and New Mexico. The preexisting rail rates reflected differentials 2 cents under contemporaneous truck rates. The proposed rates were based upon a uniform scale ranging from 19 cents at 150 miles to 52 cents at 760 miles increased 1 cent for each 10-mile block up to 200 miles and thereafter 1 cent for each 20-mile block. The reduced rates represented substantial reductions and were published to prevent the treatened construction of a pipeline which allegedly would have destroyed both rail and truck transportation. The Commission approved the rates as proposed and found them to be compensatory and no lower than necessary to meet the threatened pipeline competition.

In *Cantlay & Tanzola* v. *United States*, 115 F. Supp. 72, the Commission order approving the pipeline competitive rates was annuled, upon the ground it lacked necessary findings under the national transportation policy required in response to tank truckers contention that the national defense would be impaired by the destruction of motor carrier competition.

IFA CASE

Petroleum Products in Illinois Territory, 280 ICC 681 (entire Commission, 1951) was an investigation proceeding embracing two separate I & S cases which were heard on separate records, but argued and decided together.

Commodity description—IFA case.—The reduced rail rates applied on gasoline, fuel oil, road oil, naphtha, and other refined petroleum products.

Commodity description—Northern Lines case.—The reduced rates applied on gasoline, fuel oil, and other light petroleum products.

Territory—IFA—Case.—The reduced rates applied from the sites of certain refineries and marine and pipeline terminals to all destinations in IFA territory within 200 miles. The case involved both inter and intrastate movements and a joint hearing was held before the Illinois Commerce Commission with identical briefs filed in both proceedings.

Territory—Northern Lines case.—The rates applied from the marine terminal at Lake Superior, the marine and pipeline terminals and refineries at the Twin Cities and the pipeline terminals at Alexandria and Moorhead, Minn., West Fargo, and Grand Forks (Calspur), N.Dak., to all destinations in Minnesota and North Dakota and a few destinations in South Dakota, north of Ortonville and Mobridge, S. Dak., and a few destinations in Wisconsin intermediate between the Twin Cities and Duluth.

Level of preexisting and proposed reduced rail rates.—The preexisting rates averaged about 1 cent higher than the average truck rate and about 1.5 cents higher than the lowest truck rates. The proposed rail rates reflected an average reduction of about 3 cents to a level 2 cents lower than the average and 1.5 cents lower than the lowest truck rates. The present and proposed rates for certain rail distances are indicated in the following table:

Rail distance (miles)	Rail rates (cents)	
	Present	Proposed
12	10.5	6
35	9.0	6
61	11.5	8
87	12.5	10
119	25.0	13
186	25.0	20

Level of preexisting and proposed reduced rail rates, Northern Lines.—The preexisting rail rates averaged about 0.1 cent higher than tank truck rates and the proposed rates reflected an average reduction of 2.8 cents to a level 2.7 cents lower than the tank truck rates. The reduced rates, however, were not made on a distance scale or with a definite relation to truck rates. For certain indicated distances the present and proposed rail rates were as follows:

Miles	Average rail rate (cents)	
	Present	Proposed
0 to 24	7.4	6.3
25 to 49	8.6	6.6
50 to 74	11.5	8.6
75 to 99	13.6	10.6
100 to 149	18.1	15.4
150 to 199	22.9	20.1
200 to 249	29.0	26.2
250 to 299	37.6	33.8
Over 300	46.8	44.6
Grand average	21.2	18.4

Basis for reduced rate.—In both cases the railroads relied upon evidence of diversion to truck lines. The Commission stated that "The declared object of the proposed schedules is to arrest this trend, and, if possible, enable respondents to regain some of the traffic which they have lost" (pp. 686–687).

Comission holding, IFA case.—The Commission approved the proposed rates from Chicago and related origins to Wisconsin destinations (Area I). From Chicago and related origins to IFA destinations other than Wisconsin (Area II) and from and to all other points (Area III) the Commission found the proposed rates unlawful and prescribed minimum reasonable rates not lower than approved scales constructed separately for Areas II and III. The approved scales were in almost every instance between the levels suggested by the rail respondents and the protesting motor carriers.

Commission holding, Northern Lines case.—The Commission found the reduced rates unlawful for distances of 270 miles or less to the extent they exceeded rates on an approved distance scale. The preexisting rates from the Twin Cities and the proposed rates from other origins for distances beyond 270 miles (both of which averaged about 1 cent under the truck "total cost") were found just and reasonable.

Basis for Commission holding.—In both cases the Commission noted that "except for distances under about 75 miles" the railroads were the low-cost agency (p. 690). The minimum rate order was premised upon the finding that the proposed rate "would reverse the present situation and deprive the tank truck operators of a fair opportunity to compete with the respondents," and upon the finding that the reduced rates would "result in an undue burden upon respondents' other traffic" (p. 691). Both circumstances were said to be opposed to the purposes of the national transportation policy.

SOUTHWESTERN CASE

Southwestern Tank Truck Carriers Committee v. *A. & S. Ry.* (284 I.C.C. 75 (Div. 3, 1952)), was a complaint case brought on behalf of the titular complainant, NTTC, and 22 individual tank truck carriers against the railroads naming the assailed rates.

Commodity description.—The assailed rates applied on gasoline, fuel oil, road oil, kerosene, naphtha, liquefied petroleum gas and other refined petroleum products except residual fuel oil.

Territory.—The complaint attacked rates from points in Illinois, Missouri, Tennessee, Arkansas, Louisiana, Texas, New Mexico, Oklahoma, and Kansas to destinations in the southwest including specified points in New Mexico, Missouri, and Kansas.

Level of rates assailed.—The rates assailed were based on a distance scale. The rates suggested by complainant to cure the alleged unlawfulness were also on a scale. The assailed and suggested rates were as follows:

Distance	Assailed scale (cents)	Suggested scale (cents)
50 miles	8	10.5
75 miles	9.5	13
100 miles	11	16
125 miles	14	18.5
150 miles	16	21.5
175 miles	19	24
200 miles	21	28
250 miles	26	34
300 miles	31	39
400 miles	41	----------

Basis for assailed and suggested scale.—The assailed scale had been established on September 1, 1950 to meet motor carrier competition. The suggested scale reflected the level of actual motor carrier rates in the same territory.

Commission holding.—The Commission found the assailed rates for distances over 300 miles not shown to be unreasonable, but for distances of 300 miles and less, it found the assailed rates unlawful to the extent they exceed rates set forth in an approved distance scale. For distances specified in the above table the approved scale is as follows:

Distance (miles):	*Cents*	Distance (miles)—Continued	*Cents*
50	8.5	175	21
75	11	200	23.5
100	13.5	250	29
125	16	300	34
150	18.5		

Rates on LPG were prescribed on a basis not lower than 140 percent of the prescribed rate on other petroleum products.

Basis for holding.—The Commission rejected the scale suggested by complainant upon the ground that it was based upon the theory that rail rates should equal truck rates "whereas the record shows that the rail rates generally must be 1 cent or more lower than the truck rates if the railroads are to have a fair opportunity to share in the traffic" (p. 85).

The assailed scale rates were found to be too low, however, "in view of the competitive situation" (p. 85). Reliance was placed upon the fact that the railroads could only recapture the annual revenue loss produced by the reductions under the assailed scale by transporting an additional 409,235 tons of traffic annually. The Commission also relied upon the fact that in publishing the assailed scale the railroads' "primary objective is to prevent the further diversion of the traffic from the railroads rather than to recoup the traffic from the trucks" (p. 85) and that the reduced rates were lower than necessary for that purpose.

COLORADO-WYOMING CASE

Petroleum, Colorado and Wyoming to W.T.L. Territory (289 I.C.C. 457 (Division 2, 1953) was an I. & S. case.

Commodity description.—The reduced rail rates applied on gasoline and light oils in tank carloads.

Territory.—The rates applied from pipeline terminals and refineries in Wyoming and Colorado to destinations in Wyoming and Colorado and in the western portions of South Dakota, Nebraska and Kansas.

Level of preexisting and proposed reduced rail rates.—The preexisting level of rates was itself "established in an effort to meet motor-carrier competition" and approximated the truck rates (p. 459). The proposed rates were "generally on a basis of about 1.5 cents under the tank-truck rates" (p. 459).

Basis for proposed rates.—The railroads cited testimony of diversion to the trucks, particularly for hauls of less than 200 miles. The 1.5 cent differential was their "best judgment as to the average difference in the cost of transportation for shippers who utilize rail transportation and those who use motor-carrier transportation" (p. 459). The additional cost over the applicable rates incurred by rail shippers was said to be brought about by the excess cost of furnishing tank cars and the maintenance of larger inventories required by the heavier minimum weights attached to the rail rates.

Commission holding.—The proposed schedules were found unlawful without prejudice to the establishment of rates which, for distances under 75 miles, were no lower than tank truck rates and, for distances in excess of 75 miles, were not more than 1.5 cents under the tank truck rates.

The basis of the Commission holding.—For distances less than 75 miles the tank truck costs were shown to be lower than the rail costs, with the reverse true for distances in excess of 75 miles. Based on this finding the Commission concluded that the motor carriers had the inherent advantage for the shorter and the railroads had the inherent advantage for the longer hauls. The Commission also found that the railroads could not "successfully compete with the motor carriers at equal rates" (p. 465) and that the proposed rates reflecting the 1.5 cent differential under truck rates were not lower than necessary to meet truck competition. The Commission also relied upon the absence of any evidence that the railroads "could operate under the proposed rates for the shorter hauls without casting a burden upon other traffic" (p. 466).

The Commission's report was upheld in *Ward Transport* v. *United States*, 125 F. Supp 363, Aff'd per curiam, 348 U.S. 979.

BILLINGS CASE

Petroleum Products, Montana to Minn., N. Dak., S. Dak., & Wis. (289 I.C.C. 645 (Division 3, 1953)). This was an investigation proceeding handled under the modified procedure. NTTC filed a petition for suspension but did not further participate in the proceeding.

The reduced rail rates applied to distillate fuel oil, blended gasoline, gasoline except natural gasoline, naphtha and refined oil from Billings, East Billings, and Laural, Mont., to various destinations in North Dakota, South Dakota, Minnesota, and Wisconsin. The preexisting and proposed reduced rates conformed to no uniform distance scale. The preexisting adjustment resulted from Commission prescribed rates which had been adjusted downward to establish desired relationships between competing origins and destinations. The proposed adjustment was established by reference to the estimated cost of transportation by a proposed pipeline. The Commission disapproved the rates without indicating any level of rates which it would find lawful. The basis for this action was the failure of the railroads to introduce sufficient cost data to show the rates to be compensatory. The Commission found that "approval of rates that are noncompensatory so as to enable the carriers to compete with more efficient pipeline service, whether in existence or contemplated, would not comport with that duty (under the National Transportation Policy)" (p. 657).

KANSAS-NEBRASKA CASE

Petroleum Carriers Division v. *Atchison, T. & S. F. Ry. Co.* (302 ICC 243 (Division 3, 1957)) involved two proceedings which were heard separately but decided together. The titular complaint case brought on behalf of the titular complainant, NTTC and 10 individual tank truckers. The investigation proceeding involved the lawfulness of reduced rates named by Herman Bros. Inc. which were suspended upon protest of various railroads.

Commodity description—complaint case.—The assailed rail rates applied on petroleum and petroleum products.

Commodity description—I.&S. case.—Reduced truck rates applied on gasoline and other petroleum products.

Territory—complaint case.—The assailed rates applied from Argentine, Kans., Kansas City, Mo.-Kans., Sugar Creek, Mo., Council Bluffs, and Sioux City, Iowa, Minneapolis, Minnesota Transfer, St. Paul, and Spring Valley, Minn., Doniphan, Omaha, South Omaha, Scottsbluff and Superior, Nebr. to Nebraska destinations.

Territory—I.&S. case.—The proposed reduced truck rates applied from pipeline outlets in the Omaha-Council Bluffs area to various Nebraska destinations.

Level of preexisting and proposed rates—complaint case.—Until July 15, 1956, the rail rates had been generally 1.5 cents under truck rates. On that date the truck rates were adjusted so as to provide, for the first time, a different basis for rates on gasoline and fuel oil, and to provide for rates which bore no uniform relation to rail rates. These rates averaged 2.2 cents more than rail gasoline rates and 5.1 cents more than rail fuel oil rates. The proposed truck rates, established October 22, 1956, averaged 0.3 cents over rail rates on gasoline and 3.2 cents over rail rates on fuel oil.

Basis for assailed and proposed rates.—The railroads stated that the assailed rail rates were "arrived at after careful study and with the hope that the rates would regain some of the traffic which they have lost and permit them to share in the increasing movement of this traffic" (p. 247). Private as well as for-hire competition was relied upon.

The reduced truck rates were published to recapture substantial traffic said to have been lost to the rail movement.

Commission holding.—The assailed rail rates were found to be unreasonably low to the extent less than truck rates for distances less than 75 miles, but not otherwise unlawful. The proposed truck rates were found to be not shown to be just and reasonable.

Basis for Commission holding.—The Commission found that the tank truck operators were the low-cost carriers for distances less than 75 miles. It stated that where two methods of transportation were "in keen competition for the same traffic" and both were necessary to the national defense "the rates of both modes should be reasonably compensatory and so related that they will not be unfair or destructive." General reference was made to the National Transportation Policy (pp. 254–255).

FRIENDSHIP CASE

Gasoline and Fuel Oil, Friendship to Va. and W. Va. (299 ICC 609 (Division 3, 1957)), report on further hearing (305 ICC 673 (Entire Comm., 1959)). This is a consolidated proceeding embracing two I. & S. proceedings involving reduced rail and reduced motor carrier rates and two investigations instituted upon the Commission's own motion into the rail and truck rates in generally the same territory as involved in the I. & S. cases.

Commodity description.—Rates applied generally on bulk petroleum products.

Territory.—Rates applied from Friendship, N.C., a pipeline terminal, to various and points in the States of Virginia and West Virginia.

Level of preexisting and proposed rates.—The history of the preexisting rates was as follows: After the Commission order in I. & S. 5710, the railroads, on July 16, 1950, established a mileage scale of rates which, for the destination territory involved here, ranged from 21 cents in excess of the effective motor rates between the same points to 11.6 cents less than such rates. In late 1953, the railroads reduced their rates "to many points" to a level generally 1.5 cents less than truck. To some of these points the motor carriers reduced their rates so that "in January, 1954 the motor and rail rates, for the most part, were on about the same level" (299 ICC 612). In early 1954, many rail rates and a few motor-carrier rates were reduced so that the rail rates generally became lower than the motor rates. In January 1955, certain rail rates published to specified Virginia destinations reestablished the 1.5 cent differential and were suspended by the Commission. In February 1955, reduced motor carrier rates equalizing rail rates to two Virginia points were also suspended.

Basis for reduced rates.—The railroads relied upon figures showing the preponderance of the petroleum traffic from Friendship moved by truck prior to the establishment of the 1.5-cent differential. To one representative destination, the traffic divided 95.9 percent motor, and 4.1 percent rail prior to September, 1954. In that period the rail rates had been higher than the motor carrier rates almost constantly. After establishment of the 1.5-cent differential under truck, the traffic had divided 76.3 percent rail and 23.7 percent truck. The railroads relied upon cost testimony showing that, for distances in excess of 75 miles, they were the low-cost carrier.

Commission holding and basis therefor.—The Division report prescribed a 1-cent differential rail under motor for distances 75 miles or more.

Upon further hearing its was developed that, under the preexisting rates, motor carriers had been handling about 83.5 percent of the total competitive traffic. It further developed that the railroads were the low cost carrier, on a fully distributed basis, for distances in excess of 65 miles on gasoline and 55 miles on fuel oil, and, on an out-of-pocket cost basis, for distances in excess of 55 miles on gasoline and 20 miles on fuel oil. Petroleum shippers objected to the establishment of the 1-cent differential by a "forced increase in some of the tank truck rates" (p. 684), and indicated they would divert their traffic to private carriage if this adjustment were maintained.

Upon further hearing, the Commission found lawful the rate adjustment then in effect which reflected a 1.5-cent differential rail under motor rates. In so holding it relied upon the National Transportation Policy, sec. 15(a)(2) and sec. 16(i). In the course of so holding, it stated that petroleum traffic "can and should pay not only its direct cost of transportation service, but also as nearly as practicable, its full share of the representative cost and expenses of each agency, plus a fair profit" (687). It noted that the tank truck operators were solely dependent upon petroleum traffic for their revenue and they were the low-cost carriers for some of the traffic and that "other inherent advantages are also entitled to consideration" (p. 687). It also indicated the interest of rail shippers, with sizable financial investments in storage facilities on rail, must be considered.

APPENDIX III.—*Revenue contribution to out-of-pocket costs on selected bulk commodities*

TABLE I—1950 [1]

Commodity code	Commodity by territorial movement	Carloads	Tons	Average haul per car (tons)	Average haul per ton (miles)	Revenue (dollars)	Out-of-pocket cost (dollars)	Contribution (dollars)	Ratio (percent) of revenue to out-of-pocket cost
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
501	Gasoline:								
	United States to United States	4,102	116,543	28	240	579,153	401,483	177,670	144
	Offshore to Offshore	737	21,768	30	122	87,626	55,843	31,783	157
	South to South	1,008	30,326	30	117	85,766	57,328	28,438	150
	West to West	2,302	62,903	27	328	389,029	275,936	113,093	141
503	Fuel road oils not otherwise specified:								
	United States to United States	3,936	128,416	33	355	722,633	520,241	202,392	139
	Offshore to Offshore	1,009	32,891	33	96	106,481	69,054	37,427	154
	South to South	328	11,165	34	158	40,392	22,741	17,651	178
	West to West	2,468	79,940	32	462	531,282	393,497	137,785	135

[1] Source: Distribution of the rail revenue contribution by commodity groups—1950 Statement No. 3-52, published October 1952, prepared by the Bureau of Accounts and Cost Finding Cost Section of the Interstate Commerce Commission.

TABLE II—1955 [2]

501	Gasoline:								
	United States to United States	3,318	97,133	29	194	437,730	348,653	89,077	126
	Offshore to offshore	535	15,783	30	104	52,397	43,925	8,472	119
	South to South	882	26,801	30	104	72,753	57,528	15,225	127
	West to West	1,889	54,204	29	261	309,066	244,107	64,959	126
503	Fuel road oils not otherwise specified:								
	United States to United States	2,985	99,217	33	291	507,276	414,447	92,829	123
	Offshore to offshore	896	29,152	33	92	90,181	70,518	19,663	128
	South to South	220	7,643	35	94	19,836	13,999	5,837	142
	West to West	1,769	59,216	33	387	363,695	299,721	63,974	121

[2] Source: Distribution of the rail revenue contribution by commodity groups—1955 Statement No. 5-57, published November 1957, prepared by the Cost Finding Section, Interstate Commerce Commission, Bureau of Accounts, Cost Finding and Valuation.

TABLE III—1960 [3]

501	Gasoline:								
	United States to United States	2,158	65,095	30	169	249,789	269,029	19,240cr	93
	Offshore to offshore	288	8,759	30	108	29,557	32,823	3,226cr	90
	South to south	710	21,869	31	92	53,290	54,462	1,172cr	98
	West to west	1,143	33,888	30	230	160,944	177,389	16,445cr	91
503	Fuel road oils not otherwise specified:								
	United States to United States	2,030	69,980	34	250	344,465	332,267	12,198	104
	Offshore to offshore	620	21,209	34	89	66,121	65,430	691	101
	South to south	195	7,000	36	89	16,816	15,070	1,746	112
	West to west	1,175	40,422	34	342	240,578	234,273	6,305	102

[3] Source: Distribution of the rail revenue contribution by commodity groups—1960 Statement No. 2-62, published May 1962, prepared by the Cost Finding Section, Interstate Commerce Commission, Bureau of Accounts.

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APPENDIX IV. PROCEEDINGS INVOLVING RAIL RATE REDUCTIONS ON SOYBEAN AND VEGETABLE ACIDS

1. SWL Tariff No. 318, ICC No. 4275, February 27, 1958, I. & S. Docket 6915.
2. SWL Tariff SW 2004–B, ICC 4299, July 10, 1959.
3. SWL 318–A, ICC 4441, Supplement 3, effective December 27, 1961, cut the soybean oil rates from Emporia and Wichita, Kans., to Dallas and Fort Worth. The tank-truck carrier met these cuts and petitioned both publications be suspended, which was denied by the ICC (ICC No. 28812).
4. SWL 318–A, ICC 4441, Supplement 6, effective January 27, 1962, cut the soybean-oil rates from Fredonia, Kans., to Dallas, Tex., and from Wichita, Kans., to Fort Worth, Garland, and Sherman, Tex. The tank-truck carrier's petition for suspension was denied (ICC No. 29137).
5. SWL 318–A, ICC 4441, Supplement No. 11 effective April 27, 1962, cut the soybean-oil rate from 20 various Arkansas, Missouri, Tennessee, Kansas, and Oklahoma origins to Dallas, Denison, Fort Worth, Garland, and Sherman, Tex. The tank-truck carrier's petition for suspension was denied (ICC No. 29976).
6. SWL 318–A, ICC 4441, Supplement No. 17, effective June 27, 1962, cut the soybean-oil rate from numerous origins in Kansas, Arkansas, Missouri, and Tennessee to Oklahoma City, Okla., Houston, Tex., and Gretna, La., and New Orleans, La. The tank-truck carrier's petition for suspension was denied (ICC No. 30581).
7. SWL Tariff No. 318, Supplement No. 20, ICC No. 4441, effective July 18, 1962, cutting soybean-oil rates from Fort Smith, Morrilton, and Van Buren, Ark., to Dallas, Denison, Fort Worth, and Sherman, Tex. The tank-truck carrier's petition for suspension was denied (ICC No. 30824).

Mr. SUTHERLAND. I stated in my opening statement that I would deal in part with the question, raised by the chairman, with respect to rate bureaus. I might state, as a matter of qualification, I have spent practically my adult life on this question of rates, particularly on petroleum products and bulk commodities.

How much of an expert I am is for someone else to judge, but at least I spent a lot of time on the stand. These are generally known as motor rate and tariff bureaus, and were established by the carriers with the advent of the regulation of the motor carrier industry. The geographic scope of these bureaus covers the entire United States.

The bureaus were established by the carriers to provide a forum for the joint consideration, initiation, and establishment of rates, and the discharge of their duty under the act; to establish and maintain just and reasonable rates, and to provide the publication of these rates so arrived at; and for the filing of such rates with the various regulatory bodies, both interstate and intrastate.

Another purpose was to provide a forum for the public, to permit them an opportunity to express their views on rates proposed through the procedures of the bureau and to permit the public, including the U.S. Government, to submit proposals for the establishment of new rates, or changes in existing rates, and rules and regulations, pertaining thereto.

The bureau procedures require that all proposals submitted for changes in the rates, or the establishment of new rates, be published in a public document, giving notice to the public and the carrier. The proposals so published are referenced to indicate whether they are shipper or carrier proposals, and receive widespread publicity in trade journals such as Transport Topics and Traffic World.

This is a matter of great convenience to the interested parties—the public—in that they are kept advised of proposed changes of rates in which they have an interest. They further are afforded an opportunity to express their views on such proposals. I might say, it is also of great convenience to the competitors.

The making of rates in these various bureaus is the prerogative and duty of the carriers themselves, and the agreements under which they operate so provide. With the passage of the so-called Reed-Bullwinkle bills—now section 5(a) of Interstate Commerce Act—these agreements were submitted to the Interstate Commerce Commission for approval under that section of the act. After hearing, and some adjustments, all of the agreements have been approved by the Commission, and the bureaus are now operating in accordance with procedures set out in the approved agreements.

Under the agreements so filed, individual carriers, members of the bureau, are guaranteed the absolute right of independent action, either before, during, or after consideration is given to any proposal. These organizations provide an orderly procedure that joint consideration of ratemaking, and through their dockets outlining proposed changes in rates, afford the public an opportunity to express their views prior to publication or determination of the actual rates.

Such joint consideration, and the opportunity of the interested public to submit proposals for changes in rates, together with the opportunity of the public to express their views on rate proposals prior to adoption, all tend to develop a more established rate structure to the joint benefit of the public and the carriers. The publication of all these rates, of the carriers' members, of the bureaus as one set out in tariffs results in a simplified and more economical publication of rates to the benefit of the shipping public and the carriers.

I would like to give you a little information on that point. As you know, the Interstate Commerce Act requires all common carriers to file tariffs with the Commission. Just the printing and the postage of the national motor freight classification costs $36,000 a year.

Let us look at some of the individual bureau costs, and I am talking only of printing and postage of tariffs. The largest bureau spends $37,000 a month. These are strictly motor carriers and not rail. Or $444,000 a year. Another large one, $312,000 a year.

Another one. A third large one, $400,000 a year. Another bureau, $60,000 a year. The eastern tank-truck conference, which is a bureau on public tank-truck rates on the Middle Atlantic seaboard, for just 55 carriers, spends over $16,000 a year publishing and printing tariffs. In the proceedings before the Interstate Commerce Commission involving one of these agreements under section 5(a), the Commission, under section 5(a), application No. 2, the Western Tariff Association, agreement 276, ICC 183, at page 213, said:

> It is the function of a good rate structure to translate the conflicting demands of shippers, as well as the revenue needs of the carriers, into a system of orderly and related prices which, so far as possible when practical compromises with identical solutions and between conflicting claims are necessary, measure up to the broad standards to which carriers and shippers have long been accustomed.

I might also give you the relative importance of the bureaus and the carriers involved. The Interstate Commerce Commission has issued certificate of public convenience and necessity to 15,332 motor carriers.

I don't want you to confuse that with certificates, because some motor carriers hold more than one certificate. These are individual motor carriers. The best that we can determine, about 8,500 of these motor carriers belong to one or more of these rate bureaus. Insofar as the tank-truck industry is concerned, it is not quite as important to us as it is to the dry-freight carrier, as we call them—or the general

commodity carrier—for the probable principle reason that we don't engage in very much interlining traffic, or joint routes and through service.

It is generally a single-line haul, and rates are negotiated with the people that are paying for them. Thank you, Mr. Chairman, for listening to me for so long, and for the privilege of appearing before.

The CHAIRMAN. Mr. Sutherland, your appendixes referred to will be included in the record as part of your statement at the conclusion of it.

Mr. SUTHERLAND. I failed to note that my appendixes refer to H.R. 11583 of the 87th Congress, and they were prepared in anticipation of testifying before you last session. I would like to see them corrected to reflect H.R. 4700.

The CHAIRMAN. Very well, let the correction be made accordingly. I do observe a reprint from some petroleum or chemical publication—pictures and so forth. That would be difficult to put in the record, and we would not expect that to be included.

Mr. SUTHERLAND. I certainly would not expect you to do so. I have put it in there for the benefit of the committee's visual inspection. I have not gone to the extent of asking you to reproduce the pictures.

The CHAIRMAN. Mr. Moss, do you have any questions?

Mr. MOSS. I have no questions.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman. The only one that I have, Mr. Sutherland, is this: If the railroads are doing all the things that you say they are doing, even under the ICC regulation, and they are getting away with it, there is really little reason for any change or abolishment of minimum rates?

Mr. SUTHERLAND. I didn't say they were getting away with it. They are trying to get away with it. They didn't get away with it in the Watertown case.

Mr. YOUNGER. I mean all the reductions they made as soon as they got into competition.

Mr. SUTHERLAND. They got their reductions. They didn't get all they asked for. The Commission exercised their minimum-rate control in that respect, and limited the reductions.

It didn't grant blanket approval to what the rails proposed. They came somewhere in between. In these petroleum cases in our appendixes, the Commission did not approve the specific rates that were proposed by the railroads.

They did approve a reduction in the rates. I might say that they started out by giving the railroads a 1-cent-per-100-pound advantage, and, before the ink was dry on the paper, the railroads threw it all away by various ex parte straight across-the-board rate increases. After the Commission had given them part of what they wanted, they threw it away by raising the rates on all commodities.

Incidentally, I might also mention that the Commission has been exercising its maximum rate power authority. That has been many of these ex parte proceedings straight across the board, and I think the last one was 1960. That is, exercising their maximum rate control authority.

Mr. YOUNGER. Do you think that the ICC is doing a good job in maintaining the minimum rates?

Mr. SUTHERLAND. From our industry standpoint we think we are getting fair treatment. I don't think you could get a corporal's guard in the tank truck business to vote ICC out. We think we are getting fair treatment. Certainly in some of these orders that are repeated in this testimony, if I was writing them would have been a little different.

For example, in the *Colorado-Wyoming* case, which was a landmark case, they found the tank truck carriers to be the low-cost agency up to 75 miles and the railroads the low-cost agency beyond and prescribed rates on that basis. That case was sometime ago. Since that time due to technological improvements, such as the use of aluminum tank trucks, increasing our payload, like the jumbo tank cars and the big john freight cars, we have been able to reduce our costs per unit way beyond 75 miles.

Mr. YOUNGER. Water carriers are exempt in this bulk movement?

Mr. SUTHERLAND. They are exempt.

Mr. YOUNGER. And you are not?

Mr. SUTHERLAND. Water carriers are exempt when they are hauling three or less bulk commodities and under a different definition than is contained in H.R. 4700. That definition in H.R. 4700, in my interpretation, broadens the field of what could be bulk commodities. I mentioned two in my opening statement, but I didn't dwell on them to any extent. I would say something about what effect this deregulation of bulk commodities would have on other traffic. This definition here is a little ambiguous so it is a little difficult to answer as specifically as I would like to.

You would find more commodities moving in bulk that are now moving in packages than you would find today. A good illustration of this is that one of my first assignments when I came down in Washington in World War II was to go to the Treasury Department and convince them that we ought to haul alcohol in tank trucks. To that time it was prohibited by Treasury regulations, not by the ICC, from the tax collecting aspect rather than otherwise.

At that time most alcohol and all the whisky practically was moving either in barrels or bottles. No one dreamed that you would move whisky, alcohol, vodka, gin in tank trucks at that time. They all moved in packaged goods. Today we are moving millions of gallons of gin, vodka, whisky, alcohol of all kinds, and wine in tank trucks.

We are doing it very successfully at quite some distances from the distillery in the Kentucky areas to blending plants in the eastern seaboard, et cetera. One time the bulk of all the cement moved in bags. Today the bulk of it is moving in bulk. At one time not long ago all flour moved in bags. We are moving hundreds of tons of flour today in bulk without the necessity of bags and blowing it right into the receiving tanks of the large bakeries and those using flour in large quantities.

Liquid sugar and granulated sugar heretofore moved only in bags. Liquid sugar was an innovation of the war. They didn't go back to the dry sugar in many cases, especially in the beverage business.

In the chemical industry today they are developing, almost daily, dozens and dozens of new chemicals in a dry form and pellet stage. The plastic pellets and such as that that are used in the manufacturing of some other commodity. Nobody dreamed of hauling those kind of

commodities a few years ago, just 4 or 5 years ago, in tank trucks we had a problem when we tried to do it of unloading of those commodities. I think the tank truck industry and the people who built their equipment exercised quite a bit of ingenuity and we developed a tank vehicle of what we call an air differential. We put in 15 pounds of air in and 12 pounds out. We flow that stuff out like water today.

Until that innovation was developed you couldn't do it. If you take the minimum rates off bulk commodities there will be an awful lot of beans and peas that are moving in cans today that will be moving in bulk. You can go into lots of things which today are moving packaged that would move in bulk. I think that is where the real trouble would come and you would find that this 70 percent figure in due course of time would be low.

You all remember, I am sure, when the oil industry used to put lubricating oil in your car out of a fruit jar with a spout on the end. The American Can Co. tried to sell the oil industry in putting oil in cans. Everybody said they couldn't do it because you could not see the oil, therefore you wouldn't buy it. Today I doubt if you can buy oil if it is not in a can. That seems to contradict some of my previous statements, but I point that up only to show that there is a constant change.

Transportation economies affect these changes.

Mr. YOUNGER. Why do you say if the minimum rates were removed that there would be more commodities moved in bulk when you give all of these illustrations of the increase in the bulk movement without any change in the minimum rate?

Mr. SUTHERLAND. The change to bulk shipping is increasing today very rapidly. My illustrations at the back of my statement indicate that.

Mr. YOUNGER. That is true.

Mr. SUTHERLAND. We are putting on new and exotic equipment. As I say, we are hauling products today at almost absolute zero which is somewhere 400° below zero degrees Fahrenheit, which a year ago we thought would not be feasible.

Mr. YOUNGER. Why do you say it would be accelerated?

Mr. SUTHERLAND. Because in order to compete with the lower rates it would result in rates below cost. The actions of the railroads in competition with our industry have shown no hesitancy establishing these rates. It would force people who are now perhaps marketing their products in packages and shipping some distance, would ship in bulk and package in various consuming areas in order to take advantage of the reduced rates.

We have no objection to reduced rates. Lord knows our rates are low enough now. We had to compete with the rails on this thing. We are not making any great profit. Our operating ratio is somewhere around 96. There has got to be someone who referees this thing. I don't want to convey the impression that the railroads have got their way every time they reduced these rates. They got part of the way.

We survived with the decisions. Had there been no Interstate Commerce Commission control of minimum rates they would have gotten their whole way and I can assure you I woulln't be here today.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. I was interested in your comment a moment ago about your advanced techniques. You used the term "Big John" tank cars.

Mr. SUTHERLAND. Jumbo tank cars; 20,000 gallons or larger.

The CHAIRMAN. What is the largest one you have?

Mr. SUTHERLAND. The largest one that is actually in service is 30,000. They have an experimental car of 50,000. That is the railroads we are talking about. You were talking about railroads, were you not?

The CHAIRMAN. No; I am talking about trucks.

Mr. SUTHERLAND. Around 9,000 gallons except the State of Michigan and we are operating around 12,000 gallons there. I would say overall 9,000.

The CHAIRMAN. Each State has a different size tank truck?

Mr. SUTHERLAND. Yes. I can put it to you this way, Mr. Chairman. The 73,280 weight law that is provided by the 1956 Highway Act will permit the operation of about 8,500 gallons of gasoline. Maybe 9,000 gallons, depending on what part of the country you are in. That may sound funny to you at the moment, but if you are in a flat country like Florida you can carry that with a smaller, lighter truck. In the Ozarks we have to use a heavier piece of equipment on the front end. As a result we have a smaller load. In California where they already had a bigger weight law than the 73,280, we are hauling in the neighborhood of 10,000 gallons in what we call a double bottom unit.

That is a truck and a full trailer. The average for the United States as developed by the National Petroleum Council Committee on tank truck census of which I happened to have been a member, shows that the average of all the tank trucks on the road—now I am talking about intercity tank trucks, tank trailers, not small tank wagons you see delivering fuel at a home—the average capacity in the United States, if that means anything, of 2,000 gallons or greater, is 5,971 gallons.

Those are the units that are in intercity traffic. I am not talking about the local delivery of fuel oil. The average is as I stated for the United States as a whole. District 5, California, the average is 6,859.

The CHAIRMAN. I understood you to say a moment ago that you had developed a jumbo tank truck. I thought you referred to it as a big john.

Mr. SUTHERLAND. No, you misunderstood me, Mr. Chairman. When I used that jumbo tank cars and big john I was referring to railroad equipment.

The CHAIRMAN. I see. But you do have up to 12,000 gallons on haul?

Mr. SUTHERLAND. That is in a limited state.

The CHAIRMAN. And 10,000.

Mr. SUTHERLAND. 10,000 or 11,000.

The CHAIRMAN. 8,000.

Mr. SUTHERLAND. 8,000 is very common. 9,000 is very common.

The CHAIRMAN. Do you have in the industry, and you are very knowledgable in this field with a great deal of experience, or are you entitled to a higher rate for 5,000-gallon haul than you are a 10,000-gallon haul.

Mr. SUTHERLAND. You used the word "entitled." We kind of like to think we are but we don't get it.

The CHAIRMAN. You have to publish your tariffs.

Mr. SUTHERLAND. That is right. We publish a minimum load.

The CHAIRMAN. A minimum load?

Mr. SUTHERLAND. Yes, we publish a minimum load depending on the commodity and what area you are in. We publish a minimum load of 5,000 gallons, 6,000 gallons.

The CHAIRMAN. Ordinarily do you get more or less for a larger volume of haul than you do a smaller volume of haul?

Mr. SUTHERLAND. No, we get the same rate at the present time.

The CHAIRMAN. You get the same rate.

Mr. SUTHERLAND. Yes. I would like to enlarge upon that because you touched on something that is right now going on in our industry. I mentioned to you that we are under pressure from shippers to establish incentive rates or what they call volume tender rates. By that they mean submitting to us a sufficient amount of traffic to keep a given vehicle busy 20 hours a day, 156 hours a week, or dedicated service. Or a tender of 100,000 gallons or 200,000 gallons at a single tender. Or establish rates based on the hourly use of the vehicle, with the idea they would use the vehicle 20 to 22 hours a day.

They want a substantial reduction in the present tariff rates that are subject to single truckload movements of whatever minimum is established in the territory involved. Of course, those volume tendered rates can only come from large shippers to large consuming destinations. So far the Interstate Commerce Commission has not permitted us to put in any such rates. We have attempted to. We have some in intrastate but not interstate.

The CHAIRMAN. If you have a facility that is capable of 5,000 gallons, and then you find there is need and justification for a 10,000-gallon facility, you publish the same rate?

Mr. SUTHERLAND. I can't answer that, Mr. Chairman, just exactly yes or no. There would be a variation if there was a wide variation in the capacity. Certainly if the difference was several thousand gallons in capacity, 3,000, 4,000, 5,000 gallons, the rate on the smaller unit would be higher.

We do publish what we call in some areas dual minimum. In other words, rates on 5,000-gallon capacity, rates on 8,000-gallon capacity.

The CHAIRMAN. You have me confused now because you said a while ago you didn't.

Mr. SUTHERLAND. I stand corrected.

Mr. YOUNGER. Mr. Chairman, I am not clear either. When you talk about rates, are you publishing rates by vehicle or are you publishing rates by gallon?

Mr. SUTHERLAND. We establish rates by gallons or hundred pounds.

Mr. YOUNGER. That is what I thought. Therefore you get a different amount for transporting 10,000 gallons than you would 5,000?

Mr. SUTHERLAND. In some cases we do, Mr. Chairman.

Mr. YOUNGER. The rates are published by gallons or by hundred pounds.

Mr. SUTHERLAND. That is the same way the railroads do, too.

The CHAIRMAN. I know that is the way they do. That is what I am trying to develop. I see very well what I am trying to develop, are you entitled to the same rate with a smaller haul than you are with a larger haul where the costs are no different?

Mr. SUTHERLAND. With the cost per hundred pounds is different. The larger the vehicle capacity the lower the cost per unit. When you use the word "unit," I mean the lower cost per gallon or per hundred pounds.

The CHAIRMAN. It is getting way too late. I wanted to ask you about piggyback situation but I guess you don't get into that.

Mr. SUTHERLAND. I can answer that very quickly. The tank trucks so far won't take the impact test that has to be applied to piggyback. The impact test is put on these tanks on railroad tank cars and they run the car something like 5 miles an hour and run into a sudden stop. The results have been leaky car, leaky tanks, et cetera. So piggyback so far has not been a big factor in the tank truck industry. The railroads will have to improve their equipment a bit before they get into that.

The CHAIRMAN. It has not been practical?

Mr. SUTHERLAND. It has not been practical. Besides I might say, petroleum products and most of the products we haul, the traffic pattern does not lend itself too much to piggyback. For example we don't haul from St. Louis to Chicago, Chicago to New York, Los Angeles to San Francisco. We are distributive of a different type of industry. So the piggyback thing movement is different.

The CHAIRMAN. Let me thank you very much for your testimony. We are sorry to keep you so late but you can see that we are beginning to run behind with our schedule and we are going to have to proceed if we hear all of you who want to be heard on this matter.

Mr. SUTHERLAND. I appreciate you taking the time to hear me today. I have a convention of tank truck carriers starting Monday morning. We will have them all in town. I am sure there are a lot of you who will become more personally acquainted with them before they leave.

The CHAIRMAN. The committee will adjourn until 10 o'clock in the morning.

(Whereupon, at 5:10 p.m., the hearing adjourned, to reconvene at 10 a.m., Thursday, May 2, 1963.)

TRANSPORTATION ACT—1963

THURSDAY, MAY 2, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

The first witness this morning will be Mr. Peter T. Beardsley, general counsel of the American Trucking Associations.

Mr. Beardsley. You may identify yourself, Mr. Beardsley, for the record and proceed as you desire.

STATEMENT OF PETER T. BEARDSLEY, GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. BEARDSLEY. Thank you, Mr. Chairman.

My name is Peter T. Beardsley, general counsel of American Trucking Associations, Inc.

I would like to devote my appearance here primarily to a discussion of the antitrust laws which H.R. 4700 would substitute for the minimum rate powers of the Interstate Commerce Commission. The theory of the drafters of the bill seems to have been that to the extent that carriers were relieved of regulation by the ICC, they should be made subject to the provisions of the antitrust laws applicable to other businesses. Unfortunately, we submit, the drafters of the bill missed the target by a wide margin.

It should be noted that Federal regulations of railroads preceded enactment of the antitrust statutes by a few years. Because regulation of competition in transportation has historically been handled by the ICC, an agency created to do just that, Congress has chosen to exclude carriers regulated by that agency from most of the various provisions of the antitrust statutes as they have been amended and broadened down through the years.

Thus, a well-recognized separation of jurisdiction has resulted. In the case of business generally, the antitrust statutes are relied upon to assure fair and proper pricing of goods and services for the purpose of safeguarding against unfair or destructive competition and the monopolistic abuses which inevitably flow from an abnormal concentration of control in any area of the economy.

Application of the principles of the antitrust statutes are no less important in the field of transportation. Congress long since recognized that such safeguards were doubly important in a field such as

transportation which touches virtually every aspect of our national life. This is the primary reason for the existence of the Interstate Commerce Act and the Interstate Commerce Commission—a special statute administered by a special arm of Congress—to insure that competition should exist on a fair and sound basis, and that never again should a dominant agency of transport subject its competitors and the public to the abuses of monopoly and the discrimination, preference and prejudice that flow from unrestricted and uncontrolled competition among carriers.

In other words, in the field of transportation, the Interstate Commerce Act and the Interstate Commerce Commission were very largely substituted for the antitrust laws and the Department of Justice.

Now it is proposed, after more than 40 years of minimum rate regulation by the ICC, to strip it of its minimum rate powers with respect to 70 percent of the railroads' tonnage. At the same time, we are told by proponents of the proposed legislation, there need be no fear of predatory rate practices by the railroads because those provisions of the antitrust laws which will be applied to carrier practices will be sufficient to deter them from indulging in any such practices.

RAILS SEEK COMPETITIVE ADVANTAGE

Before getting into the main body of my testimony, let me touch briefly on the alleged need for the proposed legislation under consideration.

The railroads make the claim that motor and water carriers, by virtue of the agricultural and bulk exemptions, enjoy an unfair competitive advantage over them. I submit they have overstated their case and, in pressing for what they call "equality," are really seeking a tremendous competitive advantage.

Take the agricultural exemption first: It is a fact that the railroads operate thousands of over-the-road trucks. It is also a fact that those trucks can be operated in exactly the same way, and enjoy precisely the same exemption from regulation as any other truck similarly operated by anyone, so that in a very real sense the railroads have complete equality in the field of transportation of agricultural commodities. They can do exactly the same thing, subject to exactly the same measure of regulation, or lack of it, as can anyone else.

So what do the railroads really want? A look at the proposed legislation shows that—in the good name of equality—they seek to obtain a competitive advantage of tremendous magnitude. They want to change the existing situation whereby the exemption has a built-in limitation—the permissible payload of the motor vehicle involved—and broaden that to apply to multicar or trainload movements totaling hundreds of thousands, and, undoubtedly, in many instances, millions of pounds, which motor carriers, of course, could not utilize.

Now, Mr. Younger has been so interested in this question of equality that I thought I would like to add a little something to my prepared statement this morning and refer to a railroad subsidiary out in his neck of the woods; namely, Pacific Motor Trucking Co., a subsidiary of the Southern Pacific Railroad.

Mr. YOUNGER. Mr. Chairman, may I ask just one question to clarify?

The CHAIRMAN. Yes.

Mr. YOUNGER. As I understand, they have a grandfather clause. Now, is that applicable to all railroads in the country?

Mr. BEARDSLEY. A grandfather clause?

To the extent that railroads were operating trucks at the grandfather date, they got unrestricted rights to continue those operations.

Mr. YOUNGER. Did all the railroads over the country have them?

Mr. BEARDSLEY. Some did and some didn't. Some were more forward-looking in getting into the trucking business.

Mr. YOUNGER. So that is not applicable to every railroad in the country as in the case of the Southern Pacific?

Mr. BEARDSLEY. Not every one, but nearly every railroad in the country operates an extensive fleet of trucks.

The CHAIRMAN. So the record may be straight, as I understand the situation, the Interstate Commerce Commission has followed a policy that no railroad would be permitted to operate trucks except as they would complement its own service. Now, isn't that true?

Mr. BEARDSLEY. That may be true, sir.

The CHAIRMAN. Let's not say it may be true. I want to know if it is true or not.

Mr. BEARDSLEY. That is the result of the congressional policy which the Congress wrote into the act at the time it passed it, but the fact remains the railroads are operating a very significant number of trucks.

The CHAIRMAN. But only in accordance with what the Interstate Commerce Commission said they would operate.

Mr. BEARDSLEY. Yes.

The CHAIRMAN. I think that is fair enough.

Mr. BEARDSLEY. Yes, sir. I am not trying to imply anything except that under 203(b)(6) the exemption goes to the vehicle and these trucks the railroads operate can perform a service in the transportation of agricultural commodities to their hearts' desire the same as anyone else can.

Pacific Motor Trucking Co. operates 826 trucks, 877 truck tractors, 2,742 semitrailers, 72 full trailers.

Pacific Motor Trucking's gross operating revenues last year, that is the Southern Pacific Truck Subsidiary, were more than $40 million, placing them No. 10 in the list of all motor carriers, both independent and rail subsidiary as far as gross revenues were concerned.

I simply cite those figures as an illustration of the fact that the railroads are very significantly in the trucking business today and that again, to reiterate, if I may, that under the law the way it reads now they may use these trucks or any additional trucks they want to acquire to perform as much transportation of agricultural commodities subject to exactly the same regulation or lack of it as can anyone else.

Mr. BROTZMAN. Mr. Chairman, I didn't quite understand the witness' answer as to the extent to which the railroads are in the trucking business. I think he said they are significantly, but this testimony does not mean much to me unless I know to what extent they are, and I don't think that has been quite pinned down.

I heard some general answers but nothing specific enough or enough background information to equate that to the entire picture.

Mr. BEARDSLEY. It is impossible to state how extensively the railroads are in the trucking business in the aggregate, Mr. Brotzman.

If I take a particular railroad such as the Southern Pacific and that particular motor subsidiary, I can get you their certificates, show you what their operating rights are, between what points they can operate just as any other motor carrier. I would be happy to do that.

Mr. BROTZMAN. Let's leave exactitudes for 1 minute.

What percentage would you say?

Mr. BEARDSLEY. You mean what percentage of the railroads are in the trucking business, are using trucks?

Mr. BROTZMAN. Right.

Mr. BEARDSLEY. I would say practically 100 percent, particularly true of the large railroads.

Mr. BROTZMAN. When you say "practically 100 percent," are you meaning something less than 100 percent?

Mr. BEARDSLEY. Yes, sir.

Mr. BROTZMAN. Would you say 90 percent?

Mr. BEARDSLEY. Yes, sir.

Mr. BROTZMAN. Would that be a good estimate?

Mr. BEARDSLEY. Yes, sir. And I have particularly in mind the large class 1 railroads of the country. There may be a good many very small railroads that are not in the trucking business to any extent at all, but the degree which they are in will vary because of the restrictions in the particular operating certificates.

Some of the railroads, for example, the Burlington, their motor subsidiary has very few restrictions. They were using trucks extensively before the act was passed in 1935 and they got those grandfather rights with no restrictions.

In the 20 years that I have been in the trucking industry I have seen a steady parade of applications by railroads to perform truck service or to remove restrictions in their existing certificates, and allow—as one of the witnesses said yesterday, they have not gotten all they wanted. They have got a good deal of pretty broad authority.

Mr. BROTZMAN. When you talk about grandfather rights, I think I know to what you are alluding. Is this grandfather right of public convenience and necessity in the motor carrier?

Mr. BEARDSLEY. Yes. In other words, when the Congress passed the act in 1935, they said in effect to the Commission, you shall issue authority to everyone who applies for it to perform the same service they did on the grandfather date.

Mr. BROTZMAN. Do I understand that railroads were at that particular time engaged in the motor carrier business? Is that the way they acquired their rights to continue on in the motor carrier business?

Mr. BEARDSLEY. Some were. I would say at that time the extent of rail engagement in the business was infinitesimal compared to what it is today. There has been a great deal of authority issued to railroad subsidiaries since 1935 by the Interstate Commerce Commission.

Mr. BROTZMAN. All right.

Mr. BEARDSLEY. What about the bulk exemption applicable in the water transport field? First off, if what the railroads want is true equality, why don't they simply ask for the equivalent of the exemption now in the law, namely, the right to transport in one train, no more than three bulk commodities, not mixed with other freight, without being subject to economic regulation?

Again, in the name of equality, they seek to overreach, and to acquire a competitive advantage. They would like the opportunity to "get

at" their fully regulated competitors in the tank truck field, motor carriers which, without any exemption at all, are providing a service, in equipment furnished by them—not some third-party supplier as is the case with rail service—which, in many cases, is better than that which the railroads can offer.

But, given a free rein to indulge in cutthroat competition, the railroads could use their vastly greater financial resources to overcome the service advantages possessed by the motor carriers.

RAIL COMPETITORS NEED CONTINUED PROTECTION

We find it ironic that, at the same time proposals are before Congress to increase the protection against predatory pricing practices in the area regulated by the Federal Trade Commission, you are being asked to remove all effective restraints to such practices in a large portion of the area regulated by the Interstate Commerce Commission.

In May of last year, the Honorable Paul Rand Dixon, Chairman of the Federal Trade Commission, testified before this committee in favor of H.R. 127 and H.R. 8830. He described H.R. 127 as a bill to amend the Federal Trade Commission Act so that with certain exceptions it would be unlawful for any person engaged in commerce to sell, contract to sell, or offer to sell, goods in any part of the United States in or affecting commerce, at prices lower than those exacted by him elsewhere in the United States and where such sales would include unreasonably low prices.

H.R. 8830 he described as a bill to add to the powers of the FTC by authorizing it to issue temporary cease and desist orders, in some cases pendente lite, upon a showing, generally speaking, that the public interest would be irreparably harmed if such action were not taken.

The same proposed legislation has been introduced in this session of Congress as H.R. 800 (sales at unreasonably low prices) and H.R. 594 and H.R. 1105 (temporary cease and desist). Please recall that he asked for these powers despite the fact that the antitrust laws applicable to business generally are far broader than those provisions thereof which the bill now before you would apply to carrier practices.

In the course of his remarks, Mr. Dixon told the committee that—

> Congress has evidenced concern for small businesses in situations where large predatory interstate sellers come into an area and lower their prices to try to take away business from local concerns.

We would remind this committee that the regulated motor carrier industry is, by and large, composed of small businesses and that even our giants are, relatively speaking, pigmies compared to the large railroads.

In referring to the testimony of the proponents of minimum rate deregulation, it is necessary to go back to the last session of Congress and discuss H.R. 11583 and S. 3243. Since the bill under consideration here is identical in all important respects with the bills referred to, it may be assumed that the various witnesses, whose testimony I shall discuss, will ultimately take the same approach with respect to it as they did in the last session with respect to H.R. 11583 and S. 3243.

I have not attempted, in every case, to distinguish with respect to whether such testimony was given before this committee in connection

with H.R. 11583 or before the Senate Commerce Committee in connection with S. 3243.

The testimony of the proponents of rate deregulation was to the effect that those portions of the antitrust laws which the bill would apply to carrier practices would be an adequate substitute for the minimum rate power of which the Commission would be shorn. I say "to the effect" because none of them seemed very convinced of their stand, and the rail witnesses clearly indicated that they want to eat their cake and have it too; that is, they want the Commission's minimum rate powers removed, but they don't want really adequate antitrust protection substituted therefor.

TESTIMONY OF GOVERNMENT WITNESSES

There seemed to be some confusion on the part of Government witnesses supporting rate deregulation as to the exact nature of the "antitrust protection" which the bills they sponsored would provide.

After first stating that the proposed legislation contains antitrust provisions designed to "prevent the absence of minimum rate regulation * * * from resulting in predatory, discriminatory trade practices or rate wars reflecting monopolistic ambitions rather than true efficiency," the Secretary of Commerce became less positive.

Further on in his testimony, Mr. Hodges said he did not know whether the bill repealed the Reed-Bulwinkle Act. And the Deputy Under Secretary for Transportation stated that "there are differences of opinion as to how much antitrust immunity should be given."

Finally, the Secretary conceded that there is the "possibility" that the bill could lead to a jungle war in rates, but added that "you have the question of injunctive relief under the antitrust laws, if you see something like that developing."

The Secretary ultimately demonstrated that his apparent reliance on the antitrust laws to fill the gap left by removal of the ICC's minimum rate powers was based more on hope than solid judgment. In the House hearings, Congressman Rogers of Florida expressed concern about "substituting perhaps the regulation now of an agency set up to go into this on minimum rates, and simply turning it over to the Department of Justice under this antitrust provision."

He asked whether "we are not going to subject the entire industry to harassment, and simply turning regulation of minimum rates over to the Department of Justice, rather than as it is now regulated by agencies set up to study this and do this same work." The only answer Secretary Hodges could give was that, if the bill was passed and "the industry doesn't know any better than to bring on itself this kind of thing, then it is just too bad. I would hope very much that we did not get into the antitrust and Justice taking over, because nobody wants that to happen."

Thus, the testimony given by the Secretary of Commerce and his assistants on this phase of the proposed legislation amounts to this: They have drafted legislation which would deprive a Government agency with 75 years of experience in regulation of transportation of one of its most important powers. They think that some portions of the antitrust laws should be applied to fill the gap, but they are by no means sure as to just which of those laws should apply. And, finally, they "hope" that the carriers will be "good boys" and not

run afoul of whichever, if any, of the antitrust laws are made applicable to carrier practices.

The Assistant Attorney General, Antitrust Division, seemed at first much more positive than the representatives of the Department of Commerce as to the efficacy of the antitrust laws (or that portion of them which would be applied) as a substitute for the ICC's minimum rate powers.

Mr. Loevinger expressed the thought that section 16 of the Clayton Act (15 U.S.C. 26) would be made applicable to carriers transporting agricultural and bulk commodities, and that elimination of the ICC's minimum rate powers "will permit a carrier who might be injured by a ratemaking practice violative of the antitrust laws to seek a district court injunction against the practice."

This, he said, "will permit prompt recourse to the courts to bar anticompetitive agreements or monopolistic practices."

However, during the question-and-answer period, Mr. Loevinger seemed much less positive than in his prepared testimony. In response to a question from Mr. Rogers of Texas as to the source of relief for an aggrieved party where the claim was unreasonableness as against a situation involving discrimination, Mr. Loevinger said:

> I suppose that there is an area here of not absolute certainty. It seems to me that if it is claimed that the minimum rates are discriminatory as established, there would be such remedies available. On the other hand, the argument against this would be that even though the Commission cannot set the minimum rate on the basis of reasonableness, it still retains the right to control discrimination and, therefore, when the claim as to discrimination is made it has lost none of its powers and therefore there should not be a specific antitrust remedy. I suppose that this is something that ultimately would have to be determined by the courts. However, my opinion, which I trust will not bind either me or anyone else in the Department of Justice in the event of litigation, at this time would be that this act takes the minimum rate establishment out of the area of regulation sufficiently to subject it to all of the remedies of the antitrust laws, having in mind the provisions of 15 United States Code, section 26.

Of course, that reference is to section 16 of the Clayton Act.

When the uncertainty of the Government proponents of rate deregulation, both as to the extent of immunity from antitrust laws which should be allowed, and the relief from monopolistic rate practices which would be provided, is borne in mind, the smaller, weaker, competitive carriers can hardly be blamed for fearing the likelihood that predatory rail rate practices will be the result of enactment of this proposed legislation.

TESTIMONY OF RAIL WITNESSES

I should next like to touch on the testimony of the railroad witnesses with respect to this phase of the proposed legislation.

Mr. Loomis of the AAR stated "we think that the authors of the bill have in some respects been overzealous" in substituting certain provisions of the antitrust laws for the Commission's minimum rate powers. In answer to a question put by Congressman Schenck, Mr. Loomis espoused the proposition that "if one mode (of transport) is more efficient and can carry the products cheaper than another under fair conditions, then they should have that right."

This is the height of irony. Mr. Loomis apparently forgot, for the moment, that the result of passage of this bill would be to make it impossible for the Commission to determine which is the low-cost

carrier in any given case, since it would no longer have such jurisdiction. And nothing in the proposal to substitute certain antitrust provisions for the ICC's present authority will give any other agency or the courts such authority. In short, having "killed the umpire," so to speak, who is to determine what is fair or foul?

The comment I have just made with respect to Mr. Loomis' answer also applies to Mr. Langdon's statement that "traffic will in certain cases shift in accordance with the economic characteristics of the competing modes, but the shifts will be in the interest of the greatest economy for the Nation as a whole." Admittedly, that is an appealing word picture Mr. Langdon painted, but I would ask just one question: Who is to finally determine what "will be in the interest of the greatest economy for the Nation as a whole?" Is it to be the ICC or the railroads?

There should be no illusions on this point—if the bill before you is enacted, it will be the railroads. There is certainly nothing in any of the antitrust laws which reposes such power in the courts, even if they were as familiar with the overall transportation picture as the ICC, which they most certainly are not.

Mr. Brosnan, at several points in his testimony, vigorously emphasized that the railroads will not publish below-cost rates. If this is so, I wonder why neither he nor any of the other rail spokesmen suggested that the proposed legislation should specify that such rates would be illegal and subject to court injunction?

RAIL COMPETITORS NOT PROTECTED

Throughout the hearings, the phrase "antitrust laws" was thrown around so loosely by the proponents of this proposed legislation that anyone might well form the opinion that the full thrust of the antitrust laws was to be applied to carrier practices which, if engaged in by other businesses, would lead to prosecution by the Government or suit by aggrieved competitors.

In order to show that this is not the case, I have appended to my statement a section by section digest of those antitrust provisions which the bill would ostensibly make applicable to carriers. I say "ostensible" because some of those same sections contain language which specifically excludes carriers from their application (e.g., section 7 of the Clayton Act, 15 U.S.C.A. 18, prohibiting acquisition of the stock of one corporation by another where the result may be substantially to reduce competition, or to tend to create a monopoly).

In addition, other sections are so phrased as to cover only activities involving, for example, "commodities," which term cannot be stretched to cover a service such as transportation (e.g., section 2 of the Clayton Act, 15 U.S.C.A. 13, prohibiting discrimination in price between different purchasers of commodities of like grade and quality where the effect thereof may be substantially to lessen competition or tend to create monopoly).

Again, some of the antitrust provisions which the bill would make "applicable" to carriers are already applicable (e.g., section 10 of the Clayton Act, 15 U.S.C.A. 20, requiring common carriers to use competitive bidding for contracts for supplies, construction, et cetera, where they do business of over $50,000 a year with firms having an

officer, director, et cetera, who occupies a similar status with the carrier).

For these reasons, I have indicated in the appended digest of the antitrust laws some amendments which would be required to make them applicable to predatory carrier practices. In this connection, the Supreme Court, in *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 78 S. Ct. 514 (1958), recently held that so-called "preferential routing" by the railroad there involved was unlawful as an unreasonable restraint of trade prohibited by section 1 of the Sherman Act, 15 U.S.C.A. 1. In that case the railroad, in connection with the sale or lease of land, required the grantee or lessee to agree to ship over its lines all commodities produced or manufactured on the land, provided its rates were equal to those of competing carriers.

The bill provides that carriers exempted from minimum rate regulation "who shall engage in any act, practice or conduct or be a party to any arrangement, contract, combination, or conspiracy with respect to any rate, charge, or fare for transportation of any commodity referred to in this paragraph, or of passengers, in violation of the provisions of the antitrust laws, as designated in section 1 of the act of October 15, 1914," et cetera, shall "be subject to the proceedings and penalties specified in such laws," et cetera.

Digested, this simply means that carrier practices which are already proscribed by the Sherman and Clayton Acts will continue to be proscribed. The kicker here is that, unless the Clayton Act were amended to remove the present exemptions which it provides for carriers, and to otherwise include transportation within its ambit, its "applicability" to carriers as provided in the bill is a meaningless gesture which affords the railroads' competitors little or no protection from predatory rail actions.

The bill before you would broaden antitrust coverage of carrier practices only to this limited extent—it would eliminate Reed-Bulwinkle coverage for collective ratemaking only with respect to local, single-line operations. This is the sum total of antitrust "protection" added by the bill over and above the limited present application of those laws. The Reed-Bulwinkle Act, of course, exempts from the coverage of the antiturst laws collective ratemaking—price fixing—by carriers.

ANTITRUST PROVISIONS DO NOT MEET PRESIDENT'S RECOMMENDATIONS

The President's transportation message of April 5, 1962, stated that "existing" laws against monopoly and predatory trade practices should be substituted for the ICC's minimum rate powers, which the bill would erase. If the President had merely meant that those provisions of the Sherman and Clayton Acts already applicable to carrier practices are adequate to protect against "predatory, discriminatory trade practices or rate wars," he surely would have used plainer language to convey his thought.

Some of the proponents of rate deregulation have overlooked the true significance of this portion of the message. Mr. Heineman, for example, referred to the "appropriate" provisions of the antitrust laws which should apply to carrier practices.

We submit that there is a fundamental difference between applying the "existing laws against monopoly and predatory trade practices"—as recommended by the President—and applying only those parts of such laws as are included in the bill, and which already apply to carrier practices to the same extent (with the one exception mentioned) as the bill would apply them.

Mr. Heineman's testimony reveals the railroads' true feelings regarding the antitrust phase of the proposed legislation. He stated that only sections 1, 2, and 3 of the Sherman Act, and certain implementing procedural and remedial sections (15 U.S.C. 4, 5, 6, 7, 15, 15(a), 15(b), 16, 22, 23, 24 and 26) should be applied as substitutes for the minimum rate power which would be taken from the ICC. As noted these provisions already apply to carrier practices to almost the same extent that the bill would apply them.

Mr. Heineman objected to the fact that the bill would make the Reed-Bulwinkle Act inapplicable—except for through routes and rates—to concerted rate action on those commodities which would be removed from the ICC's minimum rate power. He believes that railroads should not only have no ICC supervision over their minimum rates, but that two or more railroads, serving between the same points, should, at the same time, have the right to jointly determine and publish the same rate for their service. In short, he seeks a situation in which the Commission will be deprived of its power to prevent cutthroat competition, and at the same time—despite protestations to the contrary—rail actions looking toward such competition will be exempted from antitrust restraints.

It is only too clear that the antitrust provisions which the bill would apply to carrier practices do not begin to meet the standard contained in the President's message, and that they will not protect against—to use his words—"predatory, discriminatory trade practices or rate wars reflecting monopolistic ambitions rather than true efficiency."

We don't believe that the full impact of all the antitrust laws, much less those few included in the bill, is an adequate substitute for the ICC's power with respect to minimum rates. And, while we strongly oppose enactment of this bill in any event, should the committee disagree and recommend its enactment, we submit that all of the provisions of the antitrust laws, including the Robinson-Patman Act, should be made applicable to carriers relieved from ICC minimum-rate power. We believe, for example, that the provisions of Robinson-Patman which make it unlawful to "sell * * * goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor" (15 U.S.C. 13(a)) should be broadened to include charges for transportation, and made specifically applicable to carriers who would be exempted from minimum-rate regulation by the ICC, under the provisions of the bill before you.

And we think that, where the antitrust laws presently are worded so as not to apply to transportation, they should be amended to specifically include it. It has been argued, of course, by the railroads that the ICC's minimum-rate powers are only a part of its total jurisdiction. Literally, this is true. It is also literally true that one's head is only a part of his anatomy. But it's a most important part—and we can think of no more important safeguard in the Interstate Commerce Act than that which gives the ICC the power to regulate minimum rates.

REMAINING ICC AUTHORITY AND INJUNCTIVE RELIEF—IF AVAILABLE—ENTIRELY INADEQUATE

I come now to the claim by the supporters of deregulation that the Commission's authority to control discriminatory ratemaking, and the right of carriers to bring actions for injunctions under the Clayton Act, will adequately protect the public interest.

Insofar as discrimination is concerned, the large shipping interests need no protection. They are the ones to whom carriers have traditionally extended "wholesale" rates, and who will continue to receive them whether this bill is passed or not.

But, under present law, carriers can—and do—file formal protests with the ICC on the basis that proposed rates of other carriers are unduly low. Although these protests are filed in the selfish interest of the carriers involved, they very frequently serve incidentally to protect the interest of small shippers who might be disadvantaged by a proposed rate but who, nevertheless, would not go to the trouble and expense of protesting it on their own behalf.

This bill will remove the right of any carrier to protest the level of a proposed rate with respect to the vast tonnages which would be exempted from minimum-rate regulation. And the courts have held that a carrier may not complain of discrimination between shippers or localities, as that is "a grievance that is not his." (*Interstate Commerce Commission* v. *Chicago, R. I. & P. R. Co.*, 218 U.S. 88, 109, 30 S. Ct. 651, 659 (1910); *El Paso & S. W. R. Co.* v. *Phelps-Rodge Mercantile Co.*, 75 F. 2d 873, 879 (1935).)

So, for all practical purposes, the proposed legislation, while not repealing, as such, the ICC's power to suspend rates, will make that power pretty much a "dead letter." While it is true that the Commission today suspends a very small percentage of rate reductions, by the same token the very fact that it possesses the power to do so acts as a brake on carrier efforts to reduce their rates to unreasonably low levels. Incidentally, I am informed that about 90 percent of the requests for suspension filed with the ICC are based on the claim that the proposed rate is unreasonably low.

Mr. Loevinger's assumption to the contrary, the provisions of section 16 of the Clayton Act (15 U.S.C.A. 26) will not enable motor carriers, for example, to seek injunctions against predatory railroad rate practices. The language of the proviso in section 16 specifically bars anyone, except the United States, from seeking injunctive relief against carriers "in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission."

If this bill were enacted, the ICC, as the railroad witnesses so often pointed out, would still have "other" jurisdiction over rail rates on agricultural and bulk commodities—for example, over their publication and filing. This being so, it is more reasonable to assume that section 16 of the Clayton Act will not allow the bringing of private suits for injunctive relief than to assume, as Mr. Loevinger appeared to do, that the courts will read the "or other jurisdiction" of the ICC out of the proviso of the section.

But, even assuming that Mr. Loevinger is correct and that motor carriers may, if the bill is passed, seek relief in the Federal courts under section 16 of the Clayton Act against railroad rates which they believe are intended to bring about monopoly, what then? Some of

the testimony which was given may have left the impression that it would be an easy matter for an aggrieved motor carrier to obtain court redress against such rail rates. Nothing could be farther from the fact.

First off, consider the comparative size and power of the adversaries—rail versus motor—and also that, in a court action, the burden of proof would rest on the shoulders of the weaker of the two.

Next, remember that injunctive relief is an extraordinary legal remedy, and one which the courts very sparingly grant. Section 16 of the Clayton Act underscores the extraordinary nature of the injunctive relief there authorized by establishing "the same conditions and principles," and the same rules as are applied by courts to equity in other cases where injunctive relief is sought, and by specifying that, for a preliminary injunction to issue, a showing must be made "that the danger of irreparable loss or damage is immediate."

As the district court expressed it in *Hershel California Fruit Products Co.* v. *Hunt Foods* (111 F. Supp. 732, 734 (1953), app. dismissed 221 F. 2d 797):

> The burden cast on plaintiffs on a motion for preliminary injunction in a case of this character is a heavy one, and the injunction should not be granted or indulged in except in a case clearly demanding it.

If the damages suffered are measurable and ascertainable in money value (*Hunt Foods*), or if the threatened damage can be adequately compensated for by monetary damages (*Fein* v. *Security Banknote Company*, 157 F. Supp. 146, 148 (1957)), a preliminary injunction will not be issued.

A preliminary injunction under section 16 will be granted only on a showing of irreparable injury during the pendency of the action (*Warner Bros. Pictures* v. *Gittone*, 110 F. 2d 292 (1940)). It will be refused where the plaintiff does not allege, and show, that it individually has sustained, or is threatened with, irreparable loss or damage immediately, or during the pendency of the action (*Caldwell-Clements, Inc.* v. *McGraw-Hill Pub. Co.*, 12 F.R.D. 403(1952)). And a preliminary injunction has been denied where a showing of irreparable damage, by not obtaining the relief, did not appear "too clearly" and a "reasonably early trial on the merits" could be accorded the plaintiffs. (*Volk* v. *Loew's Inc.*, 94 F. Supp. 162 (1950)).

The whole tenor of injunctive relief is in conflict with the purpose of suspension power in the Interstate Commerce Commission. Suspension of a rate, pending determination of its lawfulness, is not an extraordinary procedure—it is, in fact, of such a "routine" nature that it is delegated by the Commission to an employee board. The difference between transportation and antitrust regulation makes the injunction provisions of the Clayton Act—even if available—a totally inadequate substitute for the suspension power under the Interstate Commerce Act.

One of the most important types of cases in which the Commission presently exercises its rate supervision and regulation—including suspension power—is that involving competitive rate wars. This is an essential power of the Commission since it permits the check of reckless retaliatory rate reductions which result in debilitation of carriers' financial stability and impairment of their ability to meet their obli-

gations to provide service. Of course, the bill before you would eliminate this "ounce of prevention" insofar as 70 percent of rail tonnage is concerned.

The issuance of injunctions under section 16 would be subject to the very general standards of the antitrust laws and the "conditions and principles" of other injunctive proceedings, rather than the more specific ratemaking standards of the Interstate Commerce Act, as they have been implemented and given life by the Interstate Commerce Commission. Businessmen whose activities are subject to antitrust regulation frequently complain that it is impossible to determine in advance whether an action will violate some provisions of the antitrust laws—what one author has described as—

> the uncertain statutes, the unpredictable interpretations, and the almost unprecedented problems of application, enforcement, and compliance in this field of law. (Van Cise, The Federal Antitrust Laws 66 (1962).)

At least part of this confusion arises because of the multitude of jurisdictions in which antitrust questions are initially determined. The advantage of having a single forum decide questions of the lawfulness of rates—subject, of course, to review by the courts—would be lost if those questions are removed from the Commission's jurisdiction and transferred to the courts.

The Federal district courts speak in many voices, and those voices, unfortunately, do not always harmonize. The not unusual conflicts which arise among the district courts and even among the courts of appeals would be especially disastrous in the field of transportation which Congress has seen fit to regulate in accordance with an overall declared policy.

If the bill were enacted, and carriers could sue to enjoin proposed rates, it is easy to visualize comparable rates enjoined in one court and allowed to remain in effect by other courts. Since many carriers operate in several jurisdictions, it is not outside the realm of probability that the same rate attacked in different courts simultaneously could be both approved and enjoined. Where disparate interests are involved, and the equally compelling convenience of a number of widely separated parties must be considered, multiple proceedings in several courts involving the same rate are quite possible.

And, finally, courts are reluctant to make determinations which are prospective in terms. While a court might conceivably find that a given rate was unlawful and should be enjoined, it would not indicate to the parties what level of rate would conform to the antitrust laws.

For example, suppose that a motor carrier could satisfy a court that a railroad, in reducing its rate from $1 to 50 cents, had violated the antitrust laws. No doubt, the court would enjoin the rate. But that is as far as the court would go. It would not, as the Commission often does, determine the level below which the rate could not be set.

And it is quite possible that a motor carrier, having gone to all the trouble and expense of making his proof and securing an injunction against the 50-cent rate, would find himself faced with, say, a 52-cent rate, placed in effect by his rail competitor as soon as the 50-cent rate was enjoined.

For the reasons I have stated, the private injunctive remedy of section 16 of the Clayton Act—and we do not believe it would be available—is a completely unsatisfactory substitute for the minimum rate

powers of the Interstate Commerce Commission. And, as for the limited number of other provisions of the antitrust laws which the bill would apply to carrier practices, it seems likely that only after a carrier, in a given traffic and a specific route or territory, had achieved a virtual monopoly, could they be successfully invoked. Here again, the ICC's minimum rate powers can now be used to stop such situations from developing. It is conceivable, for example, that in some situations court relief under the Sherman Act might make an aggrieved carrier whole, but even so, such relief would not protect the public interest in an adequate transportation system.

SUPPORTERS OF THE BILL IGNORE HISTORY

Finally, there is a bit of history which is very pertinent to consideration of the proposed legislation. The Commission did not acquire its power to regulate minimum rates of carriers until 1920. The Sherman Act was passed in 1890 and the Clayton Act in 1914.

In *Lake Line Applications Under Panama Canal Act*, 33 I.C.C. 699, 716 (1915), the Commission found that the railroads, acting in concert—

> were able to and did drive all independent boats from the through lake and rail transportation, [and] thereby destroyed the possibility of competition with their railroads other than such competition as they were of a mind to permit.
>
> Having disposed of real competition via the lakes, these [rail-owned] boats are now held as a shield against possible competition of new independents.

These railroad activities took place when the Sherman Act was in full force, and continued for some years after the Clayton Act was passed. In fact, it was not until the ICC was given its power over minimum rates that independent water carriage again came alive. Now we are told that the Commission can be deprived of this same minimum rate power, and that these same two antitrust statutes which were of no avail when the railroads drove the independent water carriers out of business, will somehow prevent them doing the same thing again to the motor and water carriers. We prefer to believe the lesson of history.

Thank you, Mr. Chairman. That concludes my statement.

The CHAIRMAN. Mr. Beardsley, your statement will be included in the record with the references referred to as indicated and also the appendixes as referred to in your statement will be include for the information of the committee.

Mr. BEARDSLEY. Thank you.

(The statement and appendixes referred to follow:)

STATEMENT OF PETER T. BEARDSLEY, GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman, and members of the committee, my name is Peter T. Beardsley, and I am general counsel of American Trucking Associations, Inc. I would like to devote my appearance here primarily to a discussion of the antitrust laws which H.R. 4700 would substitute for the minimum rate powers of the Interstate Commerce Commission. The theory of the drafters of the bill seems to have been that to the extent that carriers were relieved of regulation by the ICC, they should be made subject to the provisions of the antitrust laws applicable to other businesses. Unfortunately, we submit, the drafters of the bill missed the target by a wide margin.

It should be noted that Federal regulation of railroads preceded enactment of the antitrust statutes by a few years. Because regulation of competition in trans-

portation has historically been handled by the ICC, an agency created to do just that, Congress has chosen to exclude carriers regulated by that agency from most of the various provisions of the antitrust statutes as they have been amended and broadened down through the years.

Thus, a well-recognized separation of jurisdiction has resulted. In the case of business generally, the antitrust statutes are relied upon to assure fair and proper pricing of goods and services for the purpose of safeguarding against unfair or destructive competition and the monopolistic abuses which inevitably flow from an abnormal concentration of control in any area of the economy.

Application of the principles of the antitrust statutes are no less important in the field of transportation. Congress long since recognized that such safeguards were doubly important in a field such as transportation which touches virtually every aspect of our national life. This is the primary reason for the existence of the Interstate Commerce Act and the Interstate Commerce Commission—a special statute administered by a special arm of Congress—to insure that competition should exist on a fair and sound basis, and that never again should a dominant agency of transport subject its competitors and the public to the abuses of monopoly and the discrimination, preference, and prejudice that flow from unrestricted and uncontrolled competition among carriers.

In other words, in the field of transportation the Interstate Commerce Act and the Interstate Commerce Commission were very largely substituted for the antitrust laws and the Department of Justice.

Now it is proposed, after more than 40 years of minimum rate regulation by the ICC, to strip it of its minimum rate powers with respect to 70 percent of the railroads' tonnage. At the same time, we are told by proponents of the proposed legislation there need be no fear of predatory rate practices by the railroads because those provisions of the antitrust laws which will be applied to carrier practices will be sufficient to deter them from indulging in any such practices.

RAILS SEEK COMPETITIVE ADVANTAGE

Before getting into the main body of my testimony, let me touch briefly on the alleged need for the proposed legislation under consideration. The railroads make the claim that motor and water carriers, by virtue of the agricultural and bulk exemptions, enjoy an unfair competitive advantage over them. I submit they have overstated their case and, in pressing for what they call "equality," are really seeking a tremendous competitive advantage.

Take the agricultural exemption first: It is a fact that the railroads operate thousands of over-the-road trucks. It is also a fact that those trucks can be operated in exactly the same way—and enjoy precisely the same exemption from regulation—as any other truck simliarly operated by anyone. So that in a very real sense the railroads have complete equality in the field of transportation of agricultural commodities—they can do exactly the same thing, subject to exactly the same measure of regulation, or lack of it, as can anyone else. So what do the railroads really want? A look at the proposed legislation shows that—in the good name of equality—they seek to obtain a competitive advantage of tremendous magnitude. They want to change the existing situation whereby the exemption has a built-in limitation—the permissible payload of the motor vehicle involved—and broaden that to apply to multicar or trainload movements totaling hundreds of thousands, and undoubtedly, in many instances, millions of pounds, which motor carriers, of course could not utilize.

What about the bulk of exemption applicable in the water transport field? First off, if what the railroads want is true equality, why don't they simply ask for the equivalent of the exemption now in the law, namely, the right to transport in one train, no more than three bulk commodities, not mixed with other freight, without being subject to economic regulation? Again, in the name of equality, they seek to overreach, and to acquire a competitive advantage. They would like the opportunity to "get at" their fully regulated competitors in the tank truck field, motor carriers which, without any exemption at all, are providing a service, in equipment furnished by them—not some third-party supplier as is the case with rail service—which in many cases is better than that which the railroads can offer. But given a free rein to indulge in cutthroat competition, the railroads could use their vastly greater financial resources to overcome the service advantages possessed by the motor carriers.

RAIL COMPETITORS NEED CONTINUED PROTECTION

We find it ironic that, at the same time proposals are before Congress to increase the protection against predatory pricing practices in the area regulated by the Federal Trade Commission, you are being asked to remove all effective restraints to such practices in a large portion of the area regulated by the Interstate Commerce Commission.

In May of last year, the Honorable Paul Rand Dixon, Chairman of the Federal Trade Commission, testified before this committee in favor of H.R. 127 and H.R. 8830. He described H.R. 127 as a bill to amend the Federal Trade Commission Act "so that with certain exceptions it would be unlawful for any person engaged in commerce to sell, contract to sell, or offer to sell, goods in any part of the United States in or affecting commerce, at prices lower than those exacted by him elsewhere in the United States and where such sales would include unreasonably low prices." H.R. 8830 he described as a bill to add to the powers of the FTC by authorizing it to issue temporary cease and desist orders, in some cases pendente lite, upon a showing, generally speaking, that the public interest would be irreparably harmed if such action were not taken. The same proposed legislation has been introduced in this session of Congress as H.R. 800 (sales at unreasonably low prices) and H.R. 594 and 1105 (temporary cease and desist). Please recall that he asked for these powers despite the fact that the antitrust laws applicable to business generally are far broader than those provisions thereof which the bill now before you would apply to carrier practices.

In the course of his remarks, Mr. Dixon told the committee that "Congress has evidenced concern for small businesses in situations where large predatory interstate sellers come into an area and lower their prices to try to take away business from local concerns." We would remind this committee that the regulated motor carrier industry is, by and large, composed of small businesses and that even our "giants" are, relatively speaking, pigmies compared to the large railroads.

In referring to the testimony of the proponents of minimum rate deregulation, it is necessary to go back to the last session of Congress and discuss H.R. 11583 and S. 3243. Since the bill under consideration here is identical in all important respects with the bills referred to, it may be assumed that the various witnesses, whose testimony I shall discuss, will ultimately take the same approach with respect to it as they did in the last session with respect to H.R. 11583 and S. 3243. I have not attempted, in every case, to distinguish with respect to whether such testimony was given before this committee in connection with H.R. 11583 or before the Senate Commerce Committee in connection with S. 3243.

The testimony of the proponents of rate deregulation was to the effect that those portions of the antitrust laws which the bill would apply to carrier practices would be an adequate substitute for the minimum rate power of which the Commission would be shorn. I say "to the effect" because none of them seemed very convinced of their stand, and the rail witnesses clearly indicated that they want to eat their cake and have it too—that is, they want the Commission's minimum rate powers removed, but they don't want really adequate antitrust protection substituted therefor.

TESTIMONY OF GOVERNMENT WITNESSES

There seemed to be some confusion on the part of Government witnesses supporting rate deregulation as to the exact nature of the "antitrust protection" which the bills they sponsored would provide.

After first stating that the proposed legislation contains antitrust provisions designed to "prevent the absence of minimum rate regulation * * * from resulting in predatory, discriminatory trade practices or rate wars reflecting monopolistic ambitions rather than true efficiency," the Secretary of Commerce became much less positive.

Further on in his testimony, Mr. Hodges said he did not know whether the bill repealed the Reed-Bulwinkle Act. And the Deputy Undersecretary for Transportation stated that "there are differences of opinion as to how much antitrust immunity should be given." Finally, the Secretary conceded that there is the "possibility" that the bill could lead to a jungle war in rates, but added that "you have the question of injunctive relief under the antitrust laws, if you see something like that developing." The Secretary ultimately demonstrated that his apparent reliance on the antitrust laws to fill the gap left by removal of the ICC's minimum rate powers was based more on hope than solid judgment. In

the House hearings, Congressman Rogers of Florida expressed concern about "substituting perhaps the regulation now of an agency set up to go into this on minimum rates, and simply turning it over to the Department of Justice under this antitrust provision." He asked whether "we are not going to subject the entire industry to harassment, and simply turning regulation of minimum rates over to the Department of Justice, rather than as it is now regulated by agencies set up to study this and do this same work." The only answer Secretary Hodges could give was that, if the bill was passed and "the industry doesn't know any better than to bring on itself this kind of thing, then it is just too bad. I would hope very much that we did not get into the antitrust and Justice taking over, because nobody wants that to happen."

Thus, the testimony given by the Secretary of Commerce and his assistance on this phase of the proposed legislation amounts to this: They have drafted legislation which would deprive a Government agency with 75 years of experience in regulation of transportation of one of its most important powers. They think that some portions of the antitrust laws should be applied to fill the gap, but they are by no means sure as to just which of those laws should apply. And finally, they "hope" that the carriers will be "good boys" and not run afoul of whichever, if any, of the antitrust laws are made applicable to carrier practices.

The Assistant Attorney General, Antitrust Division, seemed at first much more positive than the representatives of the Department of Commerce as to the efficacy of the antitrust laws (or that portion of them which would applied) as a substitute for the ICC's minimum rate powers. Mr. Loevinger expressed the thought that section 16 of the Clayton Act (15 U.S.C. 26) would be made applicable to carriers transporting agricultural and bulk commodities, and that elimination of the ICC's minimum rate powers "will permit a carrier who might be injured by a ratemaking practice violative of the antitrust laws to seek a district court injunction against the practice." This, he said, "will permit prompt recourse to the courts to bar anticompetitive agreements or monopolistic practices."

However, during the question-and-answer period, Mr. Loevinger seemed much less positive than in his prepared testimony. In response to a question from Mr. Rogers of Texas as to the source of relief for an agrieved party where the claim was unreasonableness as against a situation involving discrimination, Mr. Loevinger said:

"I suppose that there is an area here of not absolute certainty. It seems to me that if it is claimed that the minimum rates are discriminatory as established there would be such remedies available. On the other hand, the argument against this would be that even though the Commission cannot set the minimum rate on the basis of reasonableness, it still retains the right to control discrimination and therefore when the claim as to discrimination is made it has lost none of its powers and therefore there should not be a specific antitrust remedy. I suppose that this is something that ultimately would have to be determined by the courts. However, my opinion, which I trust will not bind either me or anyone else in the Department of Justice in the event of litigation, at this time would be that this act takes the minimum rate establishment out of the area of regulation sufficiently to subject it to all of the remedies of the antitrust laws, having in mind the provisions of 15 United States Code, section 26."

When the uncertainty of the Government proponents of rate deregulation, both as to the extent of immunity from antitrust laws which should be allowed, and the relief from monopolistic rate practices which would be provided, is borne in mind, the smaller, weaker, competitive carriers can hardly be blamed for fearing the likelihood that predatory rail rate practices will be the result of enactment of this proposed legislation.

TESTIMONY OF RAIL WITNESSES

I should next like to touch on the testimony of the railroad witnesses with respect to this phase of the proposed legislation. Mr. Loomis of the AAR stated "we think that the authors of the bill have in some respects been overzealous" in substituting certain provisions of the antitrust laws for the Commission's minimum rate powers. In answer to a question put by Congressman Schenck, Mr. Loomis espoused the proposition that "if one mode [of transport] is more efficient and can carry the products cheaper than another under fair conditions, then they should have that right." This is the height of irony—Mr. Loomis apparently forgot, for the moment, that the result of passage of this bill would be to make it impossible for the Commission to determine which is the low-cost carrier in any given case, since it would no longer have such jurisdiction. And

nothing in the proposal to substitute certain antitrust provisions for the ICC's present authority will give any other agency or the courts such authority. In short, having "killed the umpire," so to speak, who is to determine what is fair or foul? The comment I have just made with respect to Mr. Loomis' answer also applies to Mr. Langdon's statement that "traffic will in certain cases shift in accordance with the economic characteristics of the competing modes, but the shifts will be in the interest of the greatest economy for the Nation as a whole." Admittedly, that is an appealing word picture Mr. Langdon painted, but I would ask just one question: Who is to finally determine what "will be in the interest of the greatest economy for the Nation as a whole?" Is it to be the ICC or the railroads? There should be no illusions on this point—if the bill before you is enacted, it will be the railroads. There is certainly nothing in any of the antitrust laws which reposes such power in the courts, even if they were as familiar with the overall transportation picture as the ICC, which they most certainly are not.

Mr. Brosnan, at several points in his testimony, vigorously emphasized that the railroads will not publish below-cost rates. If this is so, I wonder why neither he nor any of the other rail spokesmen suggested that the proposed legislation should specify that such rates would be illegal and subject to court injunction?

RAIL COMPETITORS NOT PROTECTED

Throughout the hearings, the phrase "antitrust laws" was thrown around so loosely by the proponents of this proposed legislation that anyone might well form the opinion that the full thrust of the antitrust laws was to be applied to carrier practices which, if engaged in by other businesses, would lead to prosecution by the Government or suit by aggrieved competitors. In order to show that this it not the case, I have appended to my statement a section-by-section digest of those antitrust provisions which the bill would ostensibly make applicable to carriers. I say "ostensibly" because some of those same sections contain language which specifically excludes carriers from their application (e.g., sec. 7 of the Clayton Act, 15 U.S.C.A. sec 18, prohibiting acquisition of the stock of one corporation by another where the result may be substantially to reduce competition, or to tend to create a monopoly). In addition, other sections are so phrased as to cover only activities involving, for example, "commodities," which term cannot be stretched to cover a service such as transportation (e.g., sec 2 of the Clayton Act, 15 U.S.C.A., sec 13, prohibiting discrimination in price between different purchasers of commodities of like grade and quality where the effect thereof may be substantially to lessen competition or tend to create monopoly). Again, some of the antitrust provisions which the bill would make "applicable" to carriers are already applicable (e.g., sec 10 of the Clayton Act, 15 U.S.C.A. sec. 20 requiring common carriers to use competitive bidding for contracts for supplies, construction, etc., where they do business of over $50,000 a year with firms having an officer, director, etc., who occupies a similar status with the carrier). For these reasons, I have indicated in the appended digest of the antitrust laws some amendments which would be required to make them applicable to predatory carrier practices. In this connection, the Supreme Court, in *Northern Pacific Ry. Co.* v. *United States*, 356 U.S. 1, 78 S. Ct. 514 (1958), recently held that so-called preferential routing by the railroad there involved was unlawful as an unreasonable restraint of trade prohibited by section 1 of the Sherman Act, 15 U.S.C.A. sec. 1. In that case the railroad, in connection with the sale or lease of land, required the grantee or lessee to agree to ship over its lines all commodities produced or manufactured on the land, provided its rates were equal to those of competing carriers.

The bill provides that carriers exempted from minimum rate regulation "who shall engage in any act, practice, or conduct, or be a party to any arrangement, contract, combination, or conspiracy with respect to any rate, charge, or fare for transportation of any commodity referred to in this paragraph, or of passengers, in violation of the provisions of the antitrust laws, as designated in section 1 of the act of October 15, 1914," etc., shall be "subject to the proceedings and penalties specified in such laws," etc. Digested, this simply means that carrier practices which are already proscribed by the Sherman and Clayton Acts will continue to be proscribed. The kicker here is that, unless the Clayton Act were amended to remove the present exemptions which it provides for carriers, and to otherwise include transportation within its ambit, its "applicability" to carriers as provided in the bill is a meaningless gesture which affords the railroads'

competitors little or no protection from predatory rail actions. The bill before you would broaden antitrust coverage of carrier practices only to this limited extent—it would eliminate Reed-Bulwinkle coverage for collective ratemaking only with respect to local, single-line operations. This is the sum total of antitrust "protection" added by the bill over and above the limited present application of those laws. The Reed-Bulwinkle Act, of course, exempts from the coverage of the antitrust laws collective ratemaking (price fixing) by carriers.

ANTITRUST PROVISIONS DO NOT MEET PRESIDENT'S RECOMMENDATIONS

The President's transportation message of April 5, 1962, stated that "existing" laws against monopoly and predatory trade practices should be substituted for the ICC's minimum rate powers, which the bill would erase. If the President had merely meant that those provisions of the Sherman and Clayton Acts already applicable to carrier practices are adequate to protect against "predatory, discriminatory trade practices or rate wars" he surely would have used plainer language to convey his thought.

Some of the proponents of rate deregulation have overlooked the true significance of this portion of the message. Mr. Heineman, for example, referred to the "appropriate" provisions of the antitrust laws which should apply to carrier practices. We submit that there is a fundamental difference between applying the "existing laws against monopoly and predatory trade practices"—as recommended by the President—and applying only those parts of such laws as are included in the bill, and which already apply to carrier practices to the same extent (with the one exception mentioned) as the bill would apply them.

Mr. Heinemans' testimony reveals the railroads' true feelings regarding the antitrust phase of the proposed legislation. He stated that only sections 1, 2, and 3 of the Sherman Act, and certain implementing procedural and remedial sections (15 U.S.C. secs. 4, 5, 6, 7, 15, 15(a), 15(b), 16, 22, 23, 24, and 26) should be applied as substitutes for the minimum rate power which would be taken from the ICC. As noted, these provisions already apply to carrier practices to almost the same extent that the bill would apply them. Mr. Heineman objected to the fact that the bill would make the Reed-Bulwinkle Act inapplicable (except for through routes and rates) to concerted rate action on those commodities which would be removed from the ICC's minimum rate power. He believes that railroads should not only have no ICC supervision over their minimum rates, but that two or more railroads, serving between the same points, should, at the same time, have the right to jointly determine and publish the same rate for their service. In short, he seeks a situation in which the Commission will be deprived of its power to prevent cutthroat competition, and at the same time—despite protestations to the contrary—rail actions looking toward such competition will be exempted from antitrust restraint.

It is only too clear that the antitrust provisions which the bill would apply to carrier practices do not begin to meet the standard contained in the President's message, and that they will not protect against—to use his words—"predatory, discriminatory trade practices or rate wars reflecting monopolistic ambitions rather than true efficiency."

We don't believe that the full impact of all the antitrust laws, much less those few included in the bill, is an adequate substitute for the ICC's power with respect to minimum rates. And while we strongly oppose enactment of this bill in any event, should the committee disagree and recommended its enactment, we submit that all of the provisions of the antitrust laws, including the Robinson-Patman Act, should be made applicable to carriers relieved from ICC minimum rate power. We believe, for example, that the provisions of Robinson-Patman which make it unlawful to "sell * * * goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor" (15 U.S.C. § 13a) should be broadened to include charges for transportation, and made specifically applicable to carriers who would be exempted from minimum rate regulation by the ICC under the provisions of the bill before you. And we think that where the antitrust laws presently are worded so as not to apply to transportation, they should be amended to specifically include it. It has been argued, of course, by the railroads that the ICC's minimum rate powers are only a part of its total jurisdiction. Literally, this is true. It is also literally true that one's head is only a part of his anatomy. But it's a most important part—and we can think of no more important safeguard in the Interstate Commerce Act than that which gives the ICC the power to regulate minimum rates.

REMAINING ICC AUTHORITY AND INJUNCTIVE RELIEF—IF AVAILABLE—ENTIRELY INADEQUATE

I come now to the claim by the supporters of deregulation that the Commission's authority to control discriminatory ratemaking, and the right of carriers to bring actions for injunctions under the Clayton Act will adequately protect the public interest.

Insofar as discrimination is concerned, the large shipping interests need no protection. They are the ones to whom carriers have traditionally extended "wholesale" rates, and who will continue to receive them whether this bill is passed or not. But, under present law, carriers can and do file formal protests with the ICC on the basis that proposed rates of other carriers are unduly low. Although these protests are filed in the selfish interest of the carriers involved, they very frequently serve incidentally to protect the interest of small shippers who might be disadvantaged by a proposed rate but who, nevertheless, would not go to the trouble and expense of protesting it on their own behalf. This bill will remove the right of any carrier to protest the level of a proposed rate with respect to the vast tonnages which would be exempted from minimum rate regulation. And the courts have held that a carrier may not complain of discrimination between shippers or localities as that is "a grievance that is not his." *Interstate Commerce Commission* v. *Chicago, R. I. & P. R. Co.*, 218 U.S. 88, 109, 30 S. Ct. 651, 659 (1910; *El Paso & S. W. R. Co.* v. *Phelps-Dodge Mercantile Co.*, 75 F. 2d 873, 879 (1935).

So, for all practical purposes, the proposed legislation, while not repealing as such the ICC's power to suspend rates, will make that power pretty much a "dead letter." While it is true that the Commission today suspends a very small percentage of rate reductions, by the same token the very fact that it possesses the power to do so acts as a brake on carrier efforts to reduce their rates to unreasonably low levels. Incidentally, I am informed that about 90 percent of the requests for suspension filed with the ICC are based on the claim that the proposed rate is unreasonably low.

Mr. Loevinger's assumption to the contrary, the provisions of section 16 of the Clayton Act (15 U.S.C.A. sec. 26) will not enable motor carriers, for example, to seek injunctions against predatory railroad rate practices. The language of the proviso in section 16 specifically bars anyone, except the United States, from seeking injunctive relief against carriers "in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission."

If this bill were enacted, the ICC, as the railroad witnesses so often pointed out, would still have "other" jurisdiction over rail rates on agricultural and bulk commodities, for example, over their publication and filing. This being so, it is more reasonable to assume that section 16 of the Clayton Act will not allow the bringing of private suits for injunctive relief than to assume, as Mr. Loevinger appeared to do, that the courts will read the "or other jurisdiction" of the ICC out of the proviso of the section.

But, even assuming that Mr. Loevinger is correct and that motor carriers may, if the bill is passed, seek relief in the Federal courts under section 16 of the Clayton Act against railroad rates which they believe are intended to bring about monopoly, what then? Some of the testimony which was given may have left the impression that it would be an easy matter for an aggrieved motor carrier to obtain court redress against such rail rates. Nothing could be further from the fact.

First off, consider the comparative size and power of the adversaries—rail versus motor—and also that in a court action the burden of proof would rest on the shoulders of the weaker of the two. Next, remember that injunctive relief is an extraordinary legal remedy and one which the courts very sparingly grant. Section 16 of the Clayton Act underscores the extraordinary nature of the injunctive relief there authorized by establishing "the same conditions and principles" and the same rules as are applied by courts of equity in other cases where injunctive relief is sought, and by specifying that for a preliminary injunction to issue, a showing must be made "that the danger of irreparable loss or damage is immediate."

As the District Court expressed it in *Hershel California Fruit Products Co.* v. *Hunt Foods* (111 F. Supp. 732, 734 (1953), app. dismissed 221 F. 2d 797):

"The burden cast on plaintiffs on a motion for preliminary injunction in a case of this character is a heavy one and the injunction should not be granted or indulged in except in a case clearly demanding it."

If the damages suffered are measurable and ascertainable in money value (*Hunt Foods*), or if the threatened damage can be adequately compensated for by monetary damages (*Fein* v. *Security Banknote Company*, 157 F. Supp. 146, 148 (1957)), a preliminary injunction will not be issued.

A preliminary injunction under section 16 will be granted only on a showing of irreparable injury during the pendency of the action (*Warner Bros. Pictures* v. *Gittone*, 110 F. 2d 292 (1940)). It will be refused where the plaintiff does not allege and show that it individually has sustained or is threatened with irreparable loss or damage immediately, or during the pendency of the action. (*Caldwell-Clements, Inc.* v. *McGraw-Hill Pub. Co.*, 12 F.R.D. 403 (1952)). And a preliminary injunction has been denied where a showing of irreparable damage by not obtaining the relief did not appear "too clearly" and a "reasonably early trial on the merits" could be accorded the plaintiffs. (*Volk* v. *Loew's Inc.*, 94 F. Supp. 162 (1950)).

The whole tenor of injunctive relief is in conflict with the purpose of suspension power in the Interstate Commerce Commission. Suspension of a rate pending determination of its lawfulness is not an extraordinary procedure—it is, in fact, of such a "routine" nature that it is delegated by the Commission to an employee board. The difference between transportation and antitrust regulation makes the injunction provisions of the Clayton Act—even if available—a totally inadequate substitute for the suspension power under the Interstate Commerce Act.

One of the most important types of cases in which the Commission presently exercises its rate supervision and regulation—including suspension power—is that involving competitive rate wars. This is an essential power of the Commission since it permits the check of reckless retaliatory rate reductions which result in debilitation of carriers' financial stability and impairment of their ability to meet their obligations to provide service. Of course, the bill before you would elminate this "ounce of prevention" insofar as 70 percent of rail tonnage is concerned.

The issuance of injunctions under section 16 would be subject to the very general standards of the antitrust laws and the "conditions and principles" of other injunctive proceedings, rather than the more specific ratemaking standards of the Interstate Commerce Act, as they have been implemented and given life by the Interstate Commerce Commission. Businessmen whose activities are subject to antitrust regulation frequently complain that it is impossible to determine in advance whether an action will violate some provisions of the antitrust laws—what one author has described as "the uncertain statutes, the unpredicable interpretations, and the almost unprecedented problems of application, enforcement, and compliance in this field of law." Van Cise, the Federal Antitrust Laws 66 (1962).

At least part of this confusion arises because of the multitude of jurisdictions in which antitrust questions are initially determined. The advantage of having a single forum decide questions of the lawfulness of rates (subject, of course, to review by the courts) would be lost if those questions are removed from the Commission's jurisdiction and transferred to the courts. The Federal district courts speak in many voices, and those voices, unfortunately, do not always harmonize. The not unusual conflicts which arise among the district courts and even among the courts of appeals would be especially disastrous in the field of transportation which Congress has seen fit to regulate in accordance with an overall declared policy.

If the bill were enacted, and carriers could sue to enjoin proposed rates, it is easy to visualize comparable rates enjoined in one court and allowed to remain in effect by other courts. Since many carriers operate in several jurisdictions, it is not outside the realm of probability that the same rate attacked in different courts simultaneously could be both approved and enjoined. Where disparate interests are involved and the equally compelling convenience of a number of widely separated parties must be considered, multiple proceedings in several courts involving the same rate are quite possible.

And, finally, courts are reluctant to make determinations which are prospective in terms. While a court might conceivably find that a given rate was unlawful, and should be enjoined, it would not indicate to the parties what level of rate would conform to the antitrust laws.

For example, suppose that a motor carrier could satisfy a court that a railroad, in reducing its rate from $1 to 50 cents, had violated the antitrust laws. No doubt, the court would enjoin the rate. But that is as far as the court would go. It would not, as the Commission often does, determine the level below

which the rate could not be set. And, it is thus quite possible that a motor carrier, having gone to all the trouble and expense of making his proof, and securing on injunction against the 50-cent rate, would find himself faced with, say, a 52-cent rate, placed in effect by his rail competitor as soon as the 50-cent rate was enjoined.

For the reasons I have stated, the private injunctive remedy of section 16 of the Clayton Act—and we do not believe it would be available—is a completely unsatisfactory substitute for the minimum-rate powers of the Interstate Commerce Commission. And, as for the limited number of other provisions of the antitrust laws which the bill would apply to carrier practices, it seems likely that only after a carrier, in a given traffic and a specific route or territory, had achieved a virtual monopoly, could they be successfully invoked. Here again, the ICC's minimum-rate powers can now be used to stop such situations from developing. It is conceivable, for example, that in some situations court relief under the Sherman Act might make an aggrieved carried whole; but, even so. such relief would not protect the public interest in an adequate transportation system.

SUPPORTERS OF THE BILL IGNORE HISTORY

Finally, there is a bit of history which is very pertinent to consideration of the proposed legislation. The Commission did not acquire its power to regulate minimum rates of carriers until 1920. The Sherman Act was passed in 1890, and the Clayton Act in 1914. In Lake Line Applications Under Panama Canal Act, 33 ICC 699, 716 (1915), the Commission found that the railroads, acting in concert, "were able to, and did, drive all independent boats from the through lake and rail transportation, [and] thereby destroyed the possibility of competition with their railroads other than such competition as they were of a mind to permit. Having disposed of real competition via the lakes, these [rail-owned] boats are now held as a shield against possible competition of new independents." These railroad activities took place when the Sherman Act was in full force, and continued for some years after the Clayton Act was passed. In fact, it was not until the ICC was given its power over minimum rates that independent water carriage again came alive. Now we are told that the Commission can be deprived of this same minimum-rate power, and that these same two antitrust statutes, which were of no avail when the railroads drove the independent water carriers out of business, will somehow prevent them doing the same thing again to the motor and water carriers. We prefer to believe the lesson of history.

APPENDIX. SECTION-BY-SECTION ANALYSIS OF ANTITRUST LAWS DESIGNATED IN SECTION 1 OF THE ACT OF OCTOBER 15, 1914 (CLAYTON ACT)

The Sherman Act (15 U.S.C.A. secs. 1–7)

Section 1: Declares every contract, combination, or conspiracy to restrain trade or commerce among the States, or with foreign nations, to be illegal. Provides fine or imprisonment, or both, for violations.

Comment: Applicable to all businesses. Would apply to collective ratemaking by carriers, except for provisions of Reed-Bulwinkle Act, 49 U.S.C.A., section 5b.

Section 2: Declares that every person who monopolizes, attempts to monopolize, or combines or conspires with others to monopolize, trade or commerce, is guilty of a misdemeanor and subject to fine or imprisonment, or both.

Comment: See section 1.

Section 3: Same provisions as section 1 applied to territories or District of Columbia, or between them and the States.

Section 4: Provides for jurisdiction of courts and duty of U.S. district attorneys to prevent and restrain violations of the Sherman Act.

Section 5: Empowers district courts to bring in additional parties to section 4 proceedings by subpena, whether such parties reside in the district or not.

Section 6: Provides for forfeiture of property moving in commerce owned under any contract or combination or pursuant to any conspiracy subject to section 1.

Comment: In *U.S.* v. *Addyston Pipe & Steel Co.*, 85 F. 271 (1898), modified, 175 U.S. 211, 20 S. Ct. 96, an injunction proceeding, it was held there could be no forfeiture of goods, except upon jury trial.

Section 7: Defines "person" as used in Sherman Act.

The Wilson Tariff Act of 1894 (secs. 73–77, inclusive) (15 U.S.C.A. secs. 8–11)

Section 8: Prohibits combinations, conspiracies, or contracts in restraint of import trade.

Section 9: Provides for jurisdiction of courts and duty of U.S. district attorneys to restrain violations of section 8.

Section 10: Empowers district courts to bring in additional parties to section 9 proceedings by subpena, whether such parties reside in the district or not.

Section 11: Provides for forfeiture of property moving in commerce owned under any contract or combination or pursuant to any conspiracy subject to section 8.

The Clayton Act (15 U.S.C.A., secs. 12–27)

Section 12: Defines "antitrust laws" for purpose of Clayton Act.

Comment: These include sections 1–27 of title 15, U.S.C.A., except section 13a (section 3 of Robinson-Patman Act). Same definition as used in H.R. 4700.

Section 13: Prohibits discrimination in price between different purchasers of commodities of like grade and quality, where the effect may be substantially to lessen competition or tend to create a monopoly in any line of commerce.

Comment: Not applicable to carriers, since transportation is not a commodity. Should be broadened to include transportation.

Section 14: Prohibits exclusive-use contracts in connection with the lease or sale of "goods, wares, merchandise, machinery, supplies, or other commodities."

Comment: In *Fruit Growers Exp., Inc.* v. *F.T.C.*, 274 F. 205 (1921), the Federal Trade Commission was held to be without jurisdiction in a case involving contract requiring railroad party thereto to use Fruit Growers' equipment exclusively in the movement of fruits and vegetables. ICC held to have sole jurisdiction. Dismissed, 261 U.S. 629, 43 S. Ct. 518.

Section 15: Authorizes treble damage suits for violation of "antitrust laws" as defined in section 12.

Section 15a: Authorizes suits by United States to recover actual damages and costs when it is injured in its business or property.

Section 15b: Provides 4-year limitation period upon suits brought under sections 15 or 15a.

Section 16: Makes final judgment or decree in civil or criminal suit brought by United States—other than consent decrees—prima facie evidence in civil suits brought by private parties—or by Government under section 15a. Tolls running of limitations as to private actions during pendency of Government suit and one year thereafter.

Section 17: Provides that nothing in the antitrust laws shall be construed to forbid existence and operation of labor—and other—organizations.

Section 18: Prohibits acquisition of stock of one corporation by another where effect thereof may be substantially to lessen competition or tend to create monopoly.

Comment: Specifically exempts transactions consumated pursuant to authority given by various administrative agencies, including Interstate Commerce Commission.

Section 19: Prohibits interlocking directorates among banks, and any two or more million-dollar competitive corporations.

Comment: Exempts common carriers by rail, pipeline, and motor subject to ICC jurisdiction.

Section 20: Prohibits purchases of more than $50,000 of securities, supplies, etc. by common carriers from companies having same officers or directors as carriers, except upon a competitive bid basis under rules prescribed by ICC.

Section 21: Vests authority to enforce provisions of sections 13, 14, 18, and 19 in the ICC "where applicable to common carriers subject to the Interstate Commerce Act."

Section 22: Authorizes suits against corporations under antitrust laws in any district where they are found or transact business.

Section 23: Provides that subpenas for witnesses in actions by United States issued in any district may run into any other district.

Section 24: Makes officers and directors liable for acts of corporations, and subjects them, upon conviction, to fine or imprisonment, or both.

Section 25: Provides for jurisdiction of courts and duty of U.S. district attorneys to restrain violations of Clayton Act.

Section 26: Provides for injunctive relief by private parties against threatened loss or damage of violation of the antitrust laws.

Comment: Bars such relief, except to United States, against common carriers "in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission." Should be

amended to authorize private injunctive relief against unreasonably low rates on traffic removed from ICC minimum-rate regulation.

Section 27: Provides that invalidation of "any clause, sentence, paragraph or part" of Clayton Act shall not invalidate the remainder thereof.

Sec. 3 of Robinson-Patman Act. ***(15 U.S.C.A. Sec. 13a)***

Section 3 of the Robinson-Patman Act (15 U.S.C.A. sec. 13a) provides criminal penalties for sales which discriminate between purchasers of goods of like grade and quantity by virtue of any discount, rebate, allowance, or advertising service charge. Also prohibits geographical price discrimination or sales at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

Comment: In *Nashville Milk Co.* v. *Carnation Co.* (355 U.S. 373, 78 S.Ct. 352 (1958), the Supreme Court held that this section is not one of the "antitrust laws" as defined in the Clayton Act. Thus, it is not included in the antitrust laws designated in H.R. 4700. This section should be amended to include transportation service, and applied to rates for commodities removed from ICC minimum rate control.

The CHAIRMAN. In looking over this section-by-section analysis, I observed the references to the Sherman Act, the Wilson Tariff Act, the Clayton Act, the Robinson-Patman Act.

Mr. BEARDSLEY. Yes, sir.

The CHAIRMAN. Do you have a copy of the bill 4700 before you?

Mr. BEARDSLEY. Yes, sir.

The CHAIRMAN. For the benefit of the committee, would you refer to the language in the bill that would amend the antitrust provision?

Mr. BEARDSLEY. That would do what, sir?

The CHAIRMAN. That would amend or affect the antitrust law.

Mr. BEARDSLEY. Yes. Page 3, just to shorten it, beginning up at line 9, starting "If any carrier or carriers exempted," and so forth, shall do anything in violation of the provision of the antitrust laws, down to line 16, "as designated in section 1 of the Act of October 15, 1914."

Now, the act of October 15, 1914, is the Clayton Act and it includes in that definition of antitrust laws contained in that act all of the provisions that I have listed here in this digest except section 3 of the Robinson-Patman Act which is not included within the definition of antitrust laws as this bill now reads.

The CHAIRMAN. Now, it does go ahead with a proviso.

Mr. BEARDSLEY. Yes, sir.

The CHAIRMAN. The proviso has to do with section 5A.

Mr. BEARDSLEY. Yes sir, and I stated in my testimony that this bill would remove the Reed-Bulwinkle Act protection from what I call single factor or local rates, that is to say, rates where there is no joint ratemaking necessitated or no joint haul involved.

The CHAIRMAN. In other words, the provision of the Reed-Bulwinkle Act of 1948, I believe, was it not——

Mr. BEARDSLEY. I think so.

The CHAIRMAN (continuing). Would be repealed?

Mr. BEARDSLEY. No, sir; only insofar as local single factor rates are concerned. This bill would not disturb the Reed-Bulwinkle exemption with respect to joint rates as I understand the bill.

The CHAIRMAN. The authority under the Reed-Bulwinkle Act for joint rates would be retained?

Mr. BEARDSLEY. Yes, sir; that is my understanding.

The CHAIRMAN. And the provision of the Reed-Bulwinkle Act referring to independent rates would not be permitted?

Mr. BEARDSLEY. That is my understanding of the intention of the bill.

The CHAIRMAN. In other words, the provision of the bill applicable to any of the antitrust provisions, again on page 3, line 9, and go down to and through line 11 on page 4.

Mr. BEARDSLEY. Yes, sir.

The CHAIRMAN. I have at all times had some concern myself on the basic philosophy of transferring certain authority from the regulatory agency, the Interstate Commerce Commission, dealing with the problem of ratemaking to the broad or broader general authority of the Department of Justice. That has been one of the things that has concerned me a great deal about this whole program.

I have listened with a great deal of interest to the discussions heretofore, at the hearing last year, and will expect to as we go along in connection with this program.

I have observed the activities of the Department of Justice in connection with matters of this kind. Because of the difficulty we have always encountered in the application of antitrust law, I think there is a lot of merit in this proposition of what a small business might be able to do in connection with his own operation.

I am not concerned about the American Trucking Associations and I am not concerned about the Association of American Railroads because I think you are big enough, powerful enough and strong enough to protect yourselves. You have got the facilities, personnel, capability and all to deal with it. The ones that disturb me are the ones that do not have such organizations and financial capacity as well as otherwise to protect themselves.

I am very much interested in this particular principle involved. Certainly, you have discussed it very forcefully from your viewpoint. My great difficulty, I must say, is the anxiety which runs throughout your feeling about it that some of the suggestions which seem to me become a little exaggerated because of the feeling you naturally will have in our competitive system. It is our responsibility to try to separate the real issues involved here and the information that is attributable to them from the excessive feeling of competitive spirit which exists among the great organizations.

Now, you did not mention the alternative suggestion of the President in his message. Do you have any comment on that?

Mr. BEARDSLEY. Well, as it has been made pretty clear here so far by other witnesses representing our industry, we certainly much favor the alternative approach. There has been so much said about that lately that I didn't think I would add anything to it, but I cannot help speculating that if there was as much energy put into the alternative approach by all of the forms of transportation plus the administration, that maybe that line is not so impregnable as many people say.

The CHAIRMAN. Do you have any complaints with the administration?

Mr. BEARDSLEY. I vote over in Virginia.

The CHAIRMAN. I don't mean the administration, as such.

Mr. BEARDSLEY. I thought maybe a little humor would not hurt.

The CHAIRMAN. I apologize for my——

Mr. BEARDSLEY. Well, I thought that I had made it clear that we do not endorse this bill one iota. We much prefer and we believe that the public interest can only be served by retaining in the Interstate Commerce Commission the authority to deal with minimum

rates when they get so low as to amount to destructive competition, and that is really about the only time, as far as I can see, in its day-to-day administration of the act that the Interstate Commerce Commission does have minimum rate orders, and that is not meant to be criticism of the Commission.

The CHAIRMAN. In other words, you may have some complaints of the administration of the act by the Commission insofar as your industries are concerned, or to put it another way, you may not agree with everything they do but you strongly insist that they retain the authority to deal with it.

Mr. BEARDSLEY. Yes, sir. It is just like when I go out to a ball game. I may be a little annoyed by what the umpire does but I recognize the game would not go on very long if we didn't have him.

The CHAIRMAN. Yes; I was out there the other day when Minnie Minoso slid over the plate.

Mr. BEARDSLEY. So was I.

The CHAIRMAN. I was just so sure that he slid right over that plate but the umpire said otherwise.

Mr. BEARDSLEY. Yes; I observed that, too.

The CHAIRMAN. And his opinion prevailed.

Mr. BEARDSLEY. It sure did. I can't help but wonder what that game would come to if we didn't have somebody who could render that opinion no matter what we might think of them individually sometimes.

The CHAIRMAN. That does not answer to my satisfaction how you might feel on the alternative proposal suggested at present with reference to the equality of treatment.

Mr. BEARDSLEY. You mean with the idea of rolling back the existing agricultural and bulk exemptions?

The CHAIRMAN. Well, call it rollback if you want to, whatever term might be needed, and that could be, I think, to repeal the exempt provision.

Mr. BEARDSLEY. Yes. I recall toward the end of Mr. Bresnahan's appearance you asked him that and he took the position that that is the approach we favor. We believe the exemption should be reduced.

The CHAIRMAN. Do you think in order to provide the maximum service as well as the benefit to the public that there is a point whereby the application of volume haul should be considered?

I will give you an example. Not long ago, we had a bill before this committee in which the Interstate Natural Gas Co. wanted to go into the business of transporting slurry coal. They had developed a very attractive program. They run into the proposition of getting right of ways in various States. Not being able to carry out their objective in their dealing with the States, they wanted the Federal Government or Congress to move in for them.

Now, it was in the discussion that developed that they probably could transport coal in this form at approximately a dollar, a dollar and a half a ton less. Now, if that could be done within the country, I see no reason why the public should not get the benefit of this new technique.

Mr. BEARDSLEY. Neither do I, so long as there is some impartial arbitrator who can determine the difference between whether the claim that it can be done is correct or incorrect.

The CHAIRMAN. Well, this contention of somewhat archaic rules, I think, probably is worthy of consideration sometimes because I suggested to the railroads, why don't you move your coal in volume trainloads and so forth in the same area and provide the same kind of service and benefit to the public?

They advised me under no certain conditions under existing rules and the laws would they be permitted to do that because they would have to serve preferential customers and the other customers in that area would not get the benefit. There you have two strong principles that clash.

Now what I am asking you: Is there a certain point where we should have a policy that if any form of load can be delivered at less cost and be a compensatory volume, shouldn't it be permitted?

Mr. BEARDSLEY. Mr. Chairman, as I understand it, that is the present law and the Commission is very reluctant, as far as I can see, in their day-to-day interpretation of the law to refuse to allow any rate by any form of transportation where they can show they have the inherent advantage of being the low-cost carrier.

The Southern Railroad has just been allowed by Division 2 of the Commission to cut its rates drastically. They made that showing; they convinced the Division that they could perform this transportation at rates which were compensatory to it.

Believe me, we are not living in any dream world as far as the trucking industry is concerned, believing that the Commission is going to keep our competitors from quoting rates which reflect adequate compensation to them just because that will keep us in business. It is not happening.

The CHAIRMAN. You get in a position before this committee, it seems to me, that the railroads have gotten themselves into where they come before the committee urging one thing, and from the reports I have here and the arguments before the Commission, while serving their purpose they argued something else.

Now it is well-known that you went before the Commission and you argued against the *Southern Grain* case very strongly.

Mr. BEARDSLEY. I beg to differ with you. We didn't participate in the *Southern Grain* case.

The CHAIRMAN. You did not?

Mr. BEARDSLEY. No, sir.

The CHAIRMAN. I am corrected, I had thought that you were very, very deeply concerned with it.

Mr. BEARDSLEY. No, sir. This may be what you have in mind. The Commission for the first time came up with a so-called public cost theory in which they said that in making a determination as to which was the low-cost carrier that the water carriers had to consider not only the costs which they actually incurred in moving the traffic but the costs which they might have incurred if the Federal Government had imposed a toll for their use of the waterways. We felt that that reduced these competitive rate cases to absolute chaos insofar as ability to make these proofs are concerned.

We intervened on that phase of the case only and that is our only position in the case. We have no position one way or the other as to whether these rates are compensatory to the Southern Railroad. That

was after the case was decided by the Commission. We did not participate in the case.

The CHAIRMAN. Then you agree with me that any new techniques or methods that can be developed in any form of transportation should be permitted whereby the public can get the benefit of it so long as it is within the spirit of the Interstate Commerce Act?

Mr. BEARDSLEY. Yes, sir. I don't think we have ever taken any other position, to the best of my knowledge. That same philosophy is the very thing that has permitted us in recent years to be able to get into the field of bulk transportation of cement, for example, because of the technology. Advancing technology brought these pneumatic tank trailers into existence where they simply didn't exist before.

We were able to give the public the benefit of that type of transportation. I don't believe we have ever advocated any different course of action.

My main point, and the point I may be overstressing, is that without the umpire then you simply have to take the word of a dominant, financially powerful form of transportation, that we have the inherent advantage, and you don't really know whether that is true or not.

The CHAIRMAN. I do not know anything about the facts or the technicalities of the *Southern Grain* case. That is about all I can do without getting involved in another controversial question today that is somebody else's responsibility. I do know it has certainly taken a long, long time for some reason to get a decision and it is not over yet.

Mr. BEARDSLEY. No, sir. It is an extremely complicated case which involves a very wide territory, and I strongly expect that if the Commission had handled it real swiftly you would have had an outcry from many interests, shipper as well as carrier, that they had been "railroaded," so to speak, if I may use that term.

The CHAIRMAN. I think that we understand the connotation in which you use it.

Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Beardsley, this appears to be a very fine paper but not being a lawyer, some of it is over my head. I would like to clear up a misunderstanding with regard to the motor carriers owned by rail.

I would judge from your testimony that the motor carriers owned by the rails have exactly the same privilege, are operated the same way, have no restrictions whatsoever other than the regular restrictions by the ICC over motor carriers; is that true?

Mr. BEARDSLEY. No, sir. I don't believe I said that.

I said that they operate extensive amounts of equipment and that insofar as the transportation of agricultural commodities is concerned where they are making all this great claim about the terrific inequality under which they operate, they are as free to transport agricultural commodities in their equipment as in any gypsy truck operator or any regulated truck operator. That is in the area of agricultural commodities.

Mr. YOUNGER. In other words, they could take an agricultural product from Los Angeles and transport it to Washington, D.C., despite the fact they have no parallel or no rail lines of that kind?

Mr. BEARDSLEY. They absolutely could and, as one of our witnesses said the other day, if this is such a happy hunting ground, as far as we are concerned we welcome them to it.

Mr. YOUNGER. What restrictions do they have that are not equivalent restrictions of other motor carriers?

Mr. BEARDSLEY. I can only answer that question very generally.

When Congress passed the law in 1935, undoubtedly relying on its previous experience with what the railroads had done when they had a free hand in the water carrier field, Congress put certain restrictions into the act which, in effect, said, you stay in your railroad business and the trucks will stay in the trucking business and it will be better competitively for the shipping public.

As a result of that policy, the Commission and the courts, and we have had to go to the courts a few times to try to keep that policy straightened out, the Commission and the courts, generally speaking, have restricted the railroads to what are called auxiliary and supplemental services. They, for example, take certain so-called key points in the railroad certificate and say that between these points; that is, from one side or the other of these points, you can operate; but you cannot go to, through, from, or between more than one of those points, which has the effect of imposing relatively—and that term is getting longer every day as these railroads come in and get their certificates amended—relatively shorter hauls on the railroads within their certificate than they would otherwise be able to make, shorter motor hauls.

Mr. YOUNGER. But they could operate so far as the agricultural products are concerned as any exempt carrier?

Mr. BEARDSLEY. Yes, sir; just as any other carrier.

Mr. YOUNGER. And they would not have to file rates or anything else?

Mr. BEARDSLEY. No, sir. Section 203(b)(6) of the act, of course, is the one which contains that exemption. It says that:

> Nothing in this part except the provisions of section 204 relating to safety, and so forth, shall apply, among other things, to motor vehicles transporting these agricultural commodities.

Mr. YOUNGER. Now, on page 4, you refer also to this H.R. 8830 which has been previously referred to by some other witnesses.

Mr. BEARDSLEY. Yes, sir.

Mr. YOUNGER. I again ask you, speaking for the American Trucking Associations; are we to interpret your testimony here as endorsing that bill?

Mr. BEARDSLEY. No, sir; we don't take any position one way or the other on that bill. I simply point that out as what appears to me to be something of an irony that in an area where the antitrust laws are already far broader, far more inclusive, than they are in the transportation area, these representatives of these Government agencies are asking for still broader antitrust policies, while in the area where the ICC performs you are being asked to practically emasculate the ICC's powers in this competitive area and, as we interpret this bill, being asked to do very little in the way of substituting adequate antitrust protection, if you have to go that way, to make up for the minimum rate powers of which the Commission would be deprived.

Mr. YOUNGER. Now, you give a large portion of your testimony to the question of antitrust laws.

I ask this question: Are all of the antitrust laws which you say should apply to the rails, now applicable to the motor carriers?

Mr. BEARDSLEY. They are not applicable to either the regulated motor carriers or the railroads and we submit that the reason they are not applicable is because Congress chose two roads, one in the direction of business generally and one in the direction of transportation. But, rest assured, that whatever we are recommending here in the way of amendments which would strengthen the antitrust laws applicability to carriers, if you have to go that route, would apply as much to the motor carriers as to the railroads.

Mr. YOUNGER. In other words, even though you do not like that route, if in the wisdom of Congress they should accept that route, then all the antitrust laws and the applicability of them should apply equally to the motor carriers as well as the rails.

Mr. BEARDSLEY. Yes, sir. We would rather you would cut off one of our arms than both of them.

Mr. YOUNGER. And you feel that that type of legislation could be enacted effectively?

Mr. BEARDSLEY. I would hope that if you have to go that route, as I said before, that you would enact real antitrust protection if we are going to have to switch over from the regulatory agency that has done the job—and I think overall very well—for so many decades.

Mr. YOUNGER. Is there any possibility in this problem of giving to the rails the agricultural exemption, just the exemption, the same as the motor carriers have?

Mr. BEARDSLEY. Is there any possibility, you say?

Mr. YOUNGER. Reaching the decision on that point, would you have objections to that?

Mr. BEARDSLEY. Yes. I thought I had made it clear that we object to that. We think the railroads can perform with exact equality today, by virtue of their ability to operate their trucks in this area the same as any other truck. We don't know why the railroads should have a dual operation—one the railroad and one the truckline—that, to us, is not equality.

Mr. YOUNGER. You want the rails to go into the trucking business extensively?

Mr. BEARDSLEY. I don't want them to. I am suggesting, if they want to in this area, there is nothing to stop them.

Mr. YOUNGER. The ultimate result in what you advocate would be that, of course; but I am asking the question as to whether or not the agricultural exemption which would apply to the motor carriers could apply equally to the rails, without the question of abolishing the minimum rates other than on the agricultural transportation.

Mr. BEARDSLEY. Well, if I understand you correctly, Mr. Younger, that is what I thought this bill was about. I am not trying to give you a short answer, and I want to make it clear that we definitely oppose the idea of removing minimum rate power from the Commission with respect to 70 percent of the railroad tonnage, which is what is embraced by this bill, as I understand it.

Mr. YOUNGER. You mean 70 percent of their transportation is agricultural products?

Mr. BEARDSLEY. No; agricultural and bulk.

Mr. YOUNGER. I am not talking about bulk. I am talking about agricultural. You do not have the bulk exemption.

Mr. BEARDSLEY. That is right.

Mr. YOUNGER. I am talking about merely the agricultural exemption which you enjoy.

Mr. BEARDSLEY. I wish you would not use that term "enjoy." I have heard that here for 3 days.

As has been pointed out, Mr. Younger, that exemption is something that we don't want at all, and I hardly think it comports with reality to suggest that, because we don't want it at all, it should be given to the railroads. Nothing in this area works in a vacuum.

The railroads are certainly substantial haulers of agricultural commodities now; they have complained of inequality; they have said we cannot have this. We don't have this "advantage"—and I use the word in quotes, of course—which the motor carriers have. We say they do. We say they operate trucks extensively. They can do everything everyone else can do. There are no holds barred in this area and they can go into it as well as everyone else can. What they are asking for is gross inequality. They would be able to transport millions of pounds in a solid trainload. Motor carriers can't do that.

Mr. YOUNGER. Well, I might correct my statement and say the agricultural exemption which the agricultural producers enjoy.

Mr. ROGERS of Florida. Would the gentleman yield?

Mr. YOUNGER. Yes.

Mr. ROGERS of Florida. Do I understand from your testimony this is not an advantage, in that you don't have to go into ratemaking and agricultural minimum rates?

Mr. BEARDSLEY. What I am saying, Mr. Rogers, is that this, if it is an advantage, is one which the regulated motor carrier industry has not sought to take advantage of. The situation is such in the field today—because it is wide open—that it is simply an invitation to bankruptcy in most instances.

These entrepreneurs that go out and buy a second-hand truck, and go into transporting agricultural commodities, are going broke very quickly, in my estimation; but, for every one that does, there are two to take his place.

Mr. ROGERS of Florida. As far as you are concerned, you would have no objection to us changing the law and requiring the minimum rate for trucks, as for the railroads for agricultural products?

Mr. BEARDSLEY. Not only no objection, we would very much like to see you do it.

Mr. ROGERS of Florida. In other words, let everyone come under, and give equal treatment, and let everyone establish minimum rates through the ICC?

Mr. BEARDSLEY. Yes.

Mr. ROGERS of Florida. This is your position?

Mr. BEARDSLEY. Yes.

Mr. ROGERS of Florida. In other words, do away with any exemptions we now give the trucking industry?

Mr. BEARDLEY. Well, I think that we have to be realistic about these things. I think you could never do away—in fairness to the agriculture-producing community—with the exemptions which would, in effect, require a regulated truck to go somewhere into an orchard, or to have a rail siding down there; but, I think, as the Chairman suggested the other day, a feasible amendment of the law might be one which would take this exemption away from the processors, the people that are practically in the manufacturing end, as a group.

I don't believe Congress originally intended to extend that meaning, but through the courts we found we were wrong about that.

Mr. ROGERS of Florida. This is very interesting to me, because I had not understood that the trucking industry was in the position of putting everyone under minimum-rate control; but, this is your position?

Mr. BEARDSLEY. Yes.

Mr. ROGERS of Florida. Everyone. All right. Thank you.

Mr. YOUNGER. That was my understanding, that your witnesses have concurred in the recommendation of the ICC, which was to the effect that all exemptions be abolished.

Mr. BEARDSLEY. Yes, sir.

Mr. YOUNGER. Which we all agree can't be done.

Mr. BEARDSLEY. Well, I want to put a caveat on that. I think that, perhaps, if we had as united an effort as we have here, to split this thing wide open, maybe some progress can be made.

Mr. YOUNGER. I think progress can be made, in regard to the motor carrier, the unregulated backhauls, and those conditions which causes motor carrier disturbance. I think those could be treated.

Now, if I understand, one of the members testifying the other day rather recommended that the exemption on bulk hauling also be extended.

Mr. BEARDSLEY. I don't remember any of our witnesses making that recommendation, Mr. Younger.

Mr. YOUNGER. I gathered that from one of the witnesses the other day, that he so recommended.

Mr. BEARDSLEY. If it was, it completely escaped my attention.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. I have no questions.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. Thank you, Mr. Chairman.

Mr. Beardsley, Mr. Younger said he is not a lawyer and does not understand everything about it. I am a lawyer, and I can't say I understand all of it, although I want to compliment you on preparing what is an excellent brief. I think it is quite clear and quite persuasive.

Mr. BEARDSLEY. Thank you.

Mr. DEVINE. I am interested in your analogy of "kill the umpire" proposition. I may be a little sensitive in this area, having been a high school and college football official for the last 18 years.

I would like to ask you a question not relating necessarily to the merits of this legislation, but to those persons in your organization, and I don't suppose you would fall in this category as General Counsel, but relating to lobbying activities of trucking associations as well as the railroad industry.

My office—and I presume the offices of my colleagues—is literally being flooded with mail, both for and against H.R. 4700. I don't, in any way, wish to infer that we like to discourage mail. As a matter of fact, we encourage mail from our constituents; but, when the letters come, three or four lines with the identical language, "Kill this bill because we will lose our jobs," and signed by an individual, and all of them typed on the same typewriter, arguments of that nature are not necessarily persuasive or meaningful to Members of Congress.

I say that to you, and to the persons in your organization, as well as to the other side in this—the railroad people—because we have found instances where we get letters, from perhaps someone working in your industry, in opposition to a bill, and we will write back and say, "What provision of the bill do you find objectionable?" and never hear from them again.

Mr. BEARDSLEY. Mr. Devine, I will say that is why we are so glad to have an opportunity to come here and testify in extenso, so to speak, and try to persuade this committee that this is a bad bill. We find it hard to do in a letter.

Mr. DEVINE. I would say to you that testimony such as yours, in the manner in which you have presented it, is very helpful.

Mr. BEARDSLEY. Thank you.

Mr. DEVINE. I suggest you make these observations known to those persons in your organization, and to the railroad industry, that do write to their Members of Congress.

Mr. BEARDSLEY. There may be one or two in the audience now.

Mr. DEVINE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Jarman.

Mr. JARMAN. Thank you, Mr. Chairman.

Mr. Beardsley, I am interested in some of the terminology that you, and other witnesses in the hearing, have been using.

We all recognize, I think, that competition has been one of the foundation stones in building the business economy of this country.

Mr. BEARDSLEY. Yes, sir.

Mr. JARMAN. You, and others, have been predicting cutthroat competition resulting from the railroads, if this bill is passed.

Mr. BEARDSLEY. Yes, sir.

Mr. JARMAN. How do you distinguish between just plain business competition and cutthroat competition?

Mr. BEARDSLEY. Well, to put it in transportation terms, I would say that plain business competition is the ability to produce a service or a product on a fair basis; to market that product or service on a fair basis; to build a better mousetrap, on the one hand, as against the ability—because of financial power—to, in effect, sell below your own cost in order to put a competitor out of business, so you may later on come along and raise the prices on your product or service, and recoup everything and not have the competition.

Mr. JARMAN. Would you conclude that, as of today, the railroads and the motor carriers are engaged in competition as distinguished from cutthroat competition?

Mr. BEARDSLEY. I think we are engaged in very intensive competition. I think, were it not for the Commission's minimum-rate power, we would be engaged in cutthroat competition.

Mr. JARMAN. Let me ask further: The record would certainly reflect over the years that the motor carrier industry has grown to tremendous and powerful proportions. Its services to the consumer of this country has taken many millions of dollars in business from the railroad.

I suppose—and it is true in any competitive situation that I know anything about—that the same would apply to the railroad, and that it would take every dollar of business that it could possibly get from the motor carrier.

The millions upon millions of dollars in business, that the trucking industry has been successful in diverting from railroads to the trucks, would you label that as "just competition," rather than what you call cutthroat competition?

Mr. BEARDSLEY. I would suggest, first, we have not taken that money from the railroads; it has been paid to us by shippers who had a choice of the kind of transportation they wanted to use, and for reasons of their own decided to use our service. No one forced any truck service on the public.

Mr. JARMAN. By taking, I mean you got the business because you provided a transportation service at an economy to the consumer.

Mr. BEARDSLEY. Yes; just as the automobile manufacturers ran a lot of wagon manufacturers out of business, I suspect, Mr. Jarman.

Mr. JARMAN. You would label that as competition, as distinguished from cutthroat competition?

Mr. BEARDSLEY. And it is competition which has been subject to this umpire's jurisdiction ever since 1935.

Mr. JARMAN. But, you feel you are justified in looking into the crystal ball and prognosticating that, if this bill is passed, cutthroat competition would result?

Mr. BEARDSLEY. Yes, sir; if, by "crystal ball," you mean that we take the lessons of history into consideration, we recognize what the railroads have done in the past when they had no restraining influences.

We believe, fortunately or unfortunately, that human nature does not change much down through the ages. Fundamental laws remain much the same. We think they would do it again if they had the opportunity.

Mr. JARMAN. How recently have they been guilty of that kind of competition?

Mr. BEARDSLEY. If I were to take individual cases, I could refer back to this case in 1958, in which one of the railroads was held to be in violation of the antitrust laws, per se, by a so-called tying agreement with respect to the sale and rental of property—much of which I suspect it got from land-grant rights to begin with—but, if you mean when did they last run a competitor out of business, or a form of transportation——

Mr. JARMAN. I am just interested in facts, and some tangible evidence to back up what is such a definite prediction on your part, and other witnesses, as to what would result from the bill that we have before us.

Br. BEARDSLEY. That is why I cited the Lake Line application case, Mr. Jarman, beginning at page 17 of my testimony, to show what the railroads were able to do with those water carriers when they had a free hand, with no umpire around to stop them.

Mr. JARMAN. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Curtin.

Mr. CURTIN. No questions.

The CHAIRMAN. Mr. O'Brien.

Mr. O'BRIEN. Just one. I am interested in this constant reference to the giant and the pigmy, and the responsibility of Government to see that there is true competition.

Isn't it possible some time that the so-called giant might be badly crippled economically, or blinded by competition which runs in favor of the other fellow?

In other words, what I am leading up to: If it could be accepted that the giant, despite his size, might not be very strong economically, would it be the responsibility of Congress, and the Government, to see that he was given a break, rather than the so-called competitive field?

Mr. BEARDSLEY. I would not want to argue about that point, and I would not want to necessarily disagree with you.

I might refer to the fact that Congress only recently has applied a program for the relief of certain railroads who are in trouble in the form of Federal guarantees for loans which, if we are going to talk about inequalities, no one has applied that to any truckline that is in trouble yet.

Mr. O'BRIEN. Yes, but does not that action by Congress indicate a belief on the part of Congress that the railroads are in some difficulty?

Your testimony didn't go into that point, of course, but there has been testimony indicating that all the things that we have been hearing in recent years, some of them most alarming, are not true at all but actually the railroads are better off than General Motors and General Electric, and so forth.

There is such a conflict of testimony in that field before us that, frankly, it confuses me.

I accepted several years ago the fact, and it was an alarming fact, that the railroads were in trouble. Now I have been reading testimony here that indicates they are not in trouble at all; that they are doing very well and that the figures indicating their trouble have been doctored.

Mr. BEARDSLEY. Well, I never said that no railroad was in trouble.

I wonder sometimes why, for example, the railroads seem to be the only corporate industry in the country that can satisfy the public or a large section of it that their trouble always come from their competitors and never from possibly inept management.

Getting more directly to your question, I have a press release which the Commission put out today which says in 1961 and 1962 the railroads reported a 48-percent increase in net income over 1961.

Now, certainly, Mr. O'Brien, transportation is cyclical; it has its ups and downs; there is no question about it, and I would suggest that not only the railroads have their ups and downs in this case, our people have it, too. Maybe the difference is we have not had the millions of dollars to go around the country telling people we are going broke, but we have our problems, too.

Mr. O'BRIEN. I have practically concluded. I am not settling anything at this point but I can't at any time accept the theory that we must decide only between bigness and smallness because I have seen instances, and we all have, where the so-called big fellow might be worse off than the little fellow.

To get back to that umpire: I don't think that we accept the ruling that Minnie Minoso was out because he was bigger than Maury Wills; Maury Wills would be safe. That is the only point I am making.

There are instances repeated for us in Congress where the big fellow, so-called, needs help or is entitled to help and we hesitate to help because we say people might say we are trying to help the big fellow and not the little fellow. I don't accept that. I think we have to take each case on its own merit.

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That is all, Mr. Chairman.

The CHAIRMAN. Mr. Sibal.

Mr. SIBAL. Mr. Beardsley, as I recall in your response to Mr. Jarman's question as to how you would differentiate between healthy competition and cutthroat competition, you indicated that you felt that if a company in this area—transportation—has set rates below costs in order to drive a competitor out of business or out of that particular field, that would be cutthroat competition.

Mr. BEARDSLEY. Yes, sir.

Mr. SIBAL. Now, if the minimum rates were removed for the railroads in this agricultural and bulk commodity field, could they set rates which are not below the cost for them but which might be below cost for you?

Mr. BEARDSLEY. In any field that might be possible, agricultural as well as regular traffic.

Mr. SIBAL. Would that be cutthroat competition?

Mr. BEARDSLEY. You are taking a situation where one form of transportation may be able to set a rate which is compensatory so far as it is concerned?

Mr. SIBAL. Yes.

Mr. BEARDSLEY. No, sir. I don't consider that cutthroat competition.

Mr. SIBAL. Would you object to that?

Mr. BEARDSLEY. That is the law that Congress passed in 1958, as I recall. They were telling the Commission that they were not to indulge in any umbrella ratemaking, so to speak, and I don't recall that any form of transportation defended that type of ratemaking and we would not object to it.

Mr. SIBAL. You don't object to that?

Mr. BEARDSLEY. No.

Mr. SIBAL. So your real concern is they would get into ratemaking which is not compensatory to them; is that correct?

Mr. BEARDSLEY. Yes, sir; only for the purpose of removing competition which could not stay in the field as long as they can.

Mr. JARMAN. Would the gentleman yield at that point?

Mr. SIBAL. Yes.

Mr. JARMAN. If that happened, Mr. Beardsley, would you not expect the Congress, sitting in session nearly all of each year, to get active very quickly to correct such a national transportation picture?

Mr. BEARDSLEY. I have no doubt that Congress would ultimately take such action. I would suggest for many carriers in the interim it might be a matter of locking the stable door after the horse was stolen.

Mr. SIBAL. Would you object to legislation which specifically provided that the rates had to be compensatory, although it did remove the minimum floor?

Mr. BEARDSLEY. I think that is a paradox. I don't see how you can have it. If you had a requirement at all that a rate had to be compensatory, then you would have to have some agency such as the ICC to determine where it was.

Mr. SIBAL. If it were possible to work that out, you would have no objection provided the rate was compensatory; is that right?

Mr. BEARDSLEY. That would make this kind of thing much more palatable, but I believe that is actually the present situation. That is

what you have in the law today, sir. You have the ICC with the authority to make that determination, and that authority in turn depends on their ability to exercise the minimum rate power.

Mr. SIBAL. Now, you have made reference, and some of the other witnesses have made reference, to the fact that there is nothing to prevent the railroads of this country from going into the trucking business.

Do you really think that is relevant, that is what we ought to be considering, that they ought to go into the trucking business in order to compete with you people?

Mr. BEARDSLEY. I have tried to do more than that, Mr. Sibal.

I have tried to point out they are very extensively in the trucking business now. I don't believe you were here this morning when I just excerpted a number of pieces of equipment operated by a rail subsidiary in Mr. Younger's territory very extensively engaged in the trucking business.

If there is some misunderstanding that the railroads don't operate a whole lot of motor vehicle equipment, then I want to try my best to establish that they do.

Mr. SIBAL. Do you feel that the rail industry in this country is a vital part of our transportation industry?

Mr. BEARDSLEY. I am sure that every form of transportation is necessary.

Mr. SIBAL. Including rails?

Mr. BEARDSLEY. Including rails.

Mr. SIBAL. Do you feel that we should, as part of our considerations here, try to insure the health of all four of the major forms of transportation in this country?

Mr. BEARDSLEY. I am sure that that is your daily concern. I see no objection to it. We only become concerned if that desire to insure the health of one form of transportation is by draining a good bit of blood from another, in this case us.

Mr. SIBAL. Even if possibly compensatory rates might be set and the public might be the beneficiary?

Mr. BEARDSLEY. No, sir. I have taken no position against the right of any form of transportation to set a rate which is compensatory to it.

Mr. SIBAL. What this boils down to, then, is the fear that if this bill were passed or a similar bill were passed, that we would open the door to noncompensatory rates being set.

Mr. BEARDSLEY. That if you are going to play the game, there have to be some ground rules and they cannot be enforced by the competitors. There has to be an agency, this umpire, to enforce those ground rules; yes, sir.

Mr. SIBAL. I have no further questions.

Thank you.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Mr. Chairman, thank you.

Mr. Beardsley, under the provision of the proposed law, would the trucking industry also be exempt from the minimum rate regulation on bulk commodities?

Mr. BEARDSLEY. I think they would.

Mr. ROGERS of Florida. They would apply both——

Mr. BEARDSLEY. One which they do not seek.

Mr. RODGERS of Florida. Yes, I understand; but it would apply both to the railroads and to the trucks?

Mr. BEARDSLEY. Yes, sir.

Mr. ROGERS of Florida. Now, I presume in speaking for your industry you would agree that the lowest possible rates that can be effected should be effected for the public?

Mr. BEARDSLEY. Consistent with a reasonable return.

Mr. ROGERS of Florida. I say "possible."

Mr. BEARDSLEY. Yes, sir.

Mr. ROGERS of Florida. Yes. Do you agree that right now minimum rates involve a certain amount of redtape, great delay, in getting minimum rates established or not?

Mr. BEARDSLEY. I don't know how you are going to have any effective regulatory law without running into the possibility from time to time that something can't be done as quickly as possible.

Mr. ROGERS of Florida. Now, it is my understanding that you feel if this legislation has to be adopted then the antitrust provisions should be made to apply?

Mr. BEARDSLEY. And that there should be more teeth in them than are presently included in the law; yes, sir.

Mr. ROGERS of Florida. Yes. So that any person who feels aggreived in, for instance say, a trucking concern could initiate such an action to show that the price was out of line?

Mr. BEARDSLEY. Yes, sir.

Mr. ROGERS of Florida. Now what would be your objection if the committee decided in writing the law to go ahead and allow any concern, truck or railroad, on bulk and agricultural commodities to put in whatever rate they want immediately, without going through a long procedure, but to write in the law certain protection to any person who might be aggrieved, allowing that person to come from the ICC, retaining the jurisdiction in the ICC where it presently is and perhaps setting up some safeguards that have been set up in the antitrust laws but perhaps set them forth in this law and give that control to the ICC to be initiated on complaints which you would have under the antitrust laws in the procedure you have suggested? What would be your feeling about that?

Mr. BEARDSLEY. It would be this, Mr. Rogers. First of all, the situation which you describe we think is presently in the law. If that could be perfected some way that would be one thing; but just as I——

Mr. ROGERS of Florida. Just a minute. What do you mean, what I suggested?

Mr. BEARDSLEY. You said coming to the ICC and complaining about a situation.

Mr. ROGERS of Florida. I am talking about immediately putting in rates without having to go and get them established.

Mr. BEARDSLEY. As I understand you, you are in effect suggesting that the ICC should take over the administration of what amounts to certain antitrust laws.

Mr. ROGERS of Florida. I am saying that the person in the transportation business should be able to set his price; then, if it interferes with someone, they should have the right to go before the ICC with their complaint.

Mr. BEARDSLEY. Previous witnesses have shown that the ICC exercises its rate suspension power very sparingly; and actually that is

really the situation you have today. A carrier inaugurates a rate; if another carrier thinks that that rate is destructively competitive, he goes to the Commission and asks that the Commission suspend the rate. In very few instances does the Commission suspend that rate; but when they do, the Commission then conducts a hearing and ultimately determines whether that rate is destructively competitive or not. If it makes a determination that it is—those are not the words of the act, but the words I am using—if it makes the determination that it is below a reasonable rate, it is canceled; if not, it orders it to become effective.

Mr. ROGERS of Florida. Your proposal in transmitting this to the Justice Department would have the same effect, same procedure?

Mr. BEARDSLEY. It is not our proposal.

Mr. ROGERS of Florida. You just suggested it to the committee; at least, I understood that to be your suggestion.

Mr. BEARDSLEY. No, sir; we have simply said that we prefer the present system with the agency which has been in business for decades. But if, despite that feeling on our part, you feel that you have to adopt this idea of no power in this umpire with respect to minimum rates on 70 percent of the rail tonnage, then put some teeth in the antitrust law.

Mr. ROGERS of Florida. That is exactly what you suggested. If we do this, you want the antitrust provision to prevail?

Mr. BEARDSLEY. Yes.

Mr. ROGERS of Florida. I thought that was your recommendation.

Now, it seems to me that the complaint I have been able to get from witnesses before in the testimony last year was that they objected that they could not go in and set these rates or try them; and if this would be worked out in this legislation to give them a period of trial, perhaps, before initiating certain action. I don't know; maybe that would be wise, but as long as there is some means of a person who might be adversely affected having the right to go into, say, the ICC or, in the alternate, into the Department of Justice, you would not have great objection, would you?

Mr. BEARDSLEY. Yes, sir. I want to make it clear we prefer that present system. I don't want to leave any impression in your mind, Mr. Rogers, that we are saying we will do one or the other. I have tried to make it as clear as I can in my prepared testimony that we don't want to see the present system, where the Commission has this minimum rate power, changed. We think that is necessary if destructive competition is to be avoided and the shipping public is to be protected.

Mr. ROGERS of Florida. Now, suppose the committee decides to make the change as long as we give a safeguard for a person who might be injured. That is what you want to be sure of, is it not?

Mr. BEARDSLEY. Yes, except that again I would point out that we think that the safeguards are presently in the law. Someone has just reminded me, speaking of these rate suspensions, that less than one-half of 1 percent of the rates filed by the carriers with the Commission are suspended by the Commission.

Mr. ROGERS of Florida. This legislation might not have too much effect on your business, then, if it is only that little amount; is that right?

Mr. BEARDSLEY. We think it would have a tremendous effect.

Mr. ROGERS of Florida. What is the percentage?

Mr. BEARDSLEY. Less than one-half of 1 percent; but, as I pointed out in my direct testimony, the fact that the Commission has the power to suspend acts as a considerable brake on what would otherwise be a flood of destructive competitive rates if we didn't have this.

Mr. ROGERS of Florida. If we have some remedy where a person could come in, perhaps that would have the same brake.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Cunningham.

Mr. CUNNINGHAM. I have no questions.

The CHAIRMAN. Mr. Hemphill.

Mr. HEMPHILL. Thank you, Mr. Chairman.

Let me say that I join my colleagues in complimenting you on your statement.

Mr. BEARDSLEY. Thank you.

Mr. HEMPHILL. Now, as I understand your testimony, if we do pass H.R. 4700 it would not subject your industry to any more of the antitrust statutes than they are presently subjected to, would it?

Mr. BEARDSLEY. Not under the present wording, except for the——

Mr. HEMPHILL. In your criticism of the antitrust provisions of the legislation, you use the words "that those provisions are ostensibly made applicable to all carriers"?

Mr. BEARDSLEY. Yes, sir.

Mr. HEMPHILL. I gathered from that that you feel, and you have answered this indirectly to others, if the legislation is passed that we should write specific provisions into the bill as reported out of the committee—if reported out—to provide that the same antitrust provisions which are now applicable to the trucking industry should be applicable to the railroad industry in connection with minimum rates?

Mr. BEARDSLEY. No, sir; not quite that, that the same antitrust provisions which are applicable to business generally should be applicable to the transportation which would be removed from the Commission's minimum rate power.

Mr. HEMPHILL. Thank you for making that clear.

Now, on page 13 of the prepared testimony, about the sixth line down, you have a sentence which states: "This bill will remove the right of any carrier to protest the level of a proposed rate with respect to the vast tonnage which would be exempted from minimum rate regulation."

Mr. BEARDSLEY. Yes, sir.

Mr. HEMPHILL. I think it has been brought out here before, but since you are counsel I want it specifically from you. As I understand it now, the only right of a carrier to protest a level of a proposed rate for agricultural commodities would be to protest the rate which the railroads fix or the ICC says is minimal?

Mr. BEARDSLEY. Yes, sir.

Mr. HEMPHILL. But, on the other hand, as I understand the present law and the exemption which you have—I won't use the word "enjoy"—the railroads have no right to protest the minimum rates which you have set on agricultural products for the trucking industry?

Mr. BEARDSLEY. The minimum rates of the people who transport the agricultural commodities?

Mr. HEMPHILL. Yes.

Mr. BEARDSLEY. They could not protest it if the railroad happened to want to transport some in its trucks, either.

Mr. HEMPHILL. But aside from putting the railroads in the trucking business, and I am sure they appreciate your efforts, the railroads themselves, if you have a competitive rate on agricultural products which they feel is unfair or discriminatory, or any other of the worse aspects of minimum rate—cut-throat, we might say—the railroads do not have any forum to protest that at the present time, do they? Because the Interstate Commerce Commission did not accord them and the antitrust provisions, as I undersand it, only apply to ratemaking in a very limited sense?

Mr. BEARDSLEY. I suppose technically the railroads could go and complain to the antitrust division about the minimum ratemaking.

Mr. HEMPHILL. But they could not complain on reasonableness, could they?

Mr. BEARDSLEY. No.

Mr. HEMPHILL. And they could not complain, as I understand it, on the fact that they were noncompensatory; the railroads could not complain the truckers are not compensatory?

Mr. BEARDSLEY. They might, if they felt they could prove that and that there was some sort of a conspiracy there.

Mr. HEMPHILL. Yes, but just of itself, unless there was something like monopoly or something like that, which there could be. You had in your appendix to your statement, and I commend you for it, a quotation on page 4, from section 3 of the Robinson-Patman Act which sets up penalties for discriminatory pricing; but that does not apply, does it?

Mr. BEARDSLEY. No, sir.

Mr. HEMPHILL. Well, I hope you appreciate the problem of the Congress here. We have a transportation message, proposed transportation legislation which in effect says that in this particular area of transportation legislation, or perhaps ratemaking, if we get down to that, the railroads deserve some relief. That is what, in effect, the message seems to say and the legislation seems to indicate. So we have set up hearings in order that the petition of the people to the Congress might be heard in a very democratic way. We have asked people to come in here and testify as to how they feel about the legislation. I think that what concerns the committee—and I say this; I am sure you have recognized it, some of the others may not have—we apparently reflect some feeling that there should be some relief in some form. Now what alternative except doing away with the exemption? And you have proposed that alternative, as I understood your answer to someone else's question.

Mr. BEARDSLEY. Yes.

Mr. HEMPHILL. What other alternative would you people propose in order to be helpful to the committee?

Mr. BEARDSLEY. I suspect that we have been so busy trying to come up with reasons as to why this legislation should not be adopted that we have not been spending too much time to come up with alternative legislation.

We believe that the suggestion made by Chairman Harris a day or two ago of retaining the right of entry control into the field of exempt transportation of agricultural commodities, but requiring the rates

for that transportation to be filed to be subject to the law is a very good proposal to solve, and goes a long way toward solving, this so-called problem.

Mr. HEMPHILL. I share your suspicion that you have concentrated on this legislation; and I also am somewhat concerned that in the consideration of this legislation so far this year the testimony has not given very much treatment to whether or not the public, including the farming community and its shippers and the consuming public as the ultimate receiver, is going to be benefited or not be benefited. We sort of wave them aside. The railroad industry took the position last year they would be benefited to a million dollars a year. This year, the testimony has been, as I understand it, "No, they won't be benefited; because you get the prices down, but as soon as they run the truckers out of business they are going to run the prices back up." That is about the sense of the testimony, as I get it.

Do you have any comment on that, sir?

Mr. BEARDSLEY. I would say that that is the sense of the testimony, and I would say that is what history has shown from what Congressman, Esch said many years ago when the water carriers went into competition with the railroads. In the final analysis, I suspect, Mr. Hemphill, that my wife and yours would like the idea if a chainstore decided to come in and put a small neighborhood store out of business. I think for a while they would get some delightful prices on meat, vegetables, and so forth, but once that fellow was gone we would pay through the nose for it.

Mr. HEMPHILL. I have no familiarity with that, I don't have to do the shopping in my family; but I suppose that is the theory of anti-trust in monopoly legislation.

Mr. BEARDSLEY. Yes, sir; I guess it is.

Mr. HEMPHILL. That is the reason we have those laws on the books.

Mr. YOUNGER. Will the gentleman yield for a question?

Mr. HEMPHILL. Yes.

Mr. YOUNGER. Is there any evidence that the motor carriers owned by the rails have entered into cutthroat competition?

Mr. BEARDSLEY. I don't suggest there is.

Mr. YOUNGER. Well, you say you have some.

Mr. BEARDSLEY. Most of their rates in the regulated field are the same that the railroads charge, which in many instances are lower than the rates of the independent motor carriers.

Mr. HEMPHILL. Thank you. I appreciate your response to my question.

Thank you, Mr. Chairman.

Mr. CHAIRMAN. Mr. Broyhill.

Mr. BROYHILL. I just have one or two questions. It may be that you are not the one to ask this, but you and others have testified that the agricultural and bulk commodities make up 70 percent of the tonnage that the railroads carry.

Mr. BEARDSLEY. We simply use the railroads' own figure.

Mr. BROYHILL. Certainly. Do you have any figures as to how much of these products the members of your association carry?

Mr. BEARDSLEY. No, sir. I think possibly, if I may just take a minute to clear this thing up, our association is simply a federation of State associations. We are not in the field, and could not be, to protect

the individual truck operator in his individual business. These figures are not available, because there is no requirement that they be reported or anything of that nature.

Mr. BROYHILL. And you don't know if there would be any way to get this percentage of business from any association or any agency?

Mr. BEARDSLEY. Well, I don't want to misstate myself here, Mr. Broyhill. I am sure that the Department of Agriculture, for example, publishes figures with respect to certain markets as to what percentage of, we will say, livestock moves in by truck as against rail. All I meant to say, as far as I know there is no overall comprehensive compilation of just how much tonnage is moving and who is moving it between what points.

Mr. BROYHILL. Thank you. No other questions.

The CHAIRMAN. Mr. Rogers of Texas.

Mr. ROGERS of Texas. No questions, thank you.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. I regret very much I was not here to hear your statement. I am sure it was a very fine one, and I assure you I will take it and read it and study it very carefully.

There is only one proposition that I would like to mention to you, and that is this: If H.R. 4700 were law and railroads were permitted to set minimum rates without the approval of the ICC, as I understand it, in the event they desired to later increase that rate then it would be necessary to go before the ICC; is that correct?

Mr. BEARDSLEY. Yes, sir.

Mr. KORNEGAY. There is, as I understand it, now a provision in the Interstate Commerce Act which provides that with reference to water carriage that a railroad cannot increase a rate which was used in competition with water carriage without first going before the Commission and showing the Commission that it rests upon changed conditions.

Now, do you feel that that proposition in itself would serve as any deterrent against setting noncompensatory rates?

Mr. BEARDSLEY. I don't think it has, Mr. Kornegay, in the water carrier field. The railroads, for example, over the years selectively reduced rates on certain commodities. It has not stopped them from going to the Commission and getting general rate increase after general rate increase, and it has not stopped the Commission from granting them.

Mr. KORNEGAY. Are there cases where that has happened where the railroad failed to show change in circumstances or circumstances existing different from those that did exist at the time the rate was lowered?

Mr. BEARDSLEY. I want to be preferectly candid about this, because this is a water carrier provision. I have had no occasion to make a particular study of it, but I don't recall any case dealing with that particular section. I may be wrong about it. It has not been a very live issue in the transportation world, as far as I know.

Mr. KORNEGAY. That is all, Mr. Chairman. Thank you very much, Mr. Beardsley.

The CHAIRMAN. Mr. Brotzman.

Mr. BROTZMAN. Directing your attention to the bill itself for a moment, Mr. Beardsley, these questions will be rather primerlike

to help me understand a little bit more about the provision contained on page 3, beginning on line 9, that we have already alluded to.

Mr. BEARDSLEY. Yes, sir.

Mr. BROTZMAN. Now, do I understand that the language that designates the act of October 15, 1914, has the legal effect of placing the Clayton Act in effect?

Mr. BEARDSLEY. It has the legal effect of defining antitrust laws for the purpose of this bill the same as they are defined in the Clayton Act. The Clayton Act defines antitrust laws to include, as we read it, the Sherman Act, the Clayton Act itself, and the so-called Wilson Tariff Act of 1894.

Mr. BROTZMAN. All right. Now, we have been talking about the Reed-Bulwinkle Act here, and I understand that the thrust of this law is to exempt from coverage of the antitrust laws collective ratemaking by carriers.

Mr. BEARDSLEY. Yes, sir.

Mr. BROTZMAN. Now, turning back to the act for a minute, does the proviso beginning on line 21 refer to the Reed-Bulwinkle Act?

Mr. BEARDSLEY. Yes, sir. It says in effect, as I read it, that with respect to joint rates; that is, rates where it is necessary for two carriers to sit down and make a rate, because they are talking about transportation which neither one of them can perform individually but they must join together. That language says that that protection from the price-fixing provisions of the antitrust laws shall continue to remain in effect.

Mr. BROTZMAN. There was a little disturbance in the room, and this is something that is rather detailed and I could not understand it too well. I would just like to go back over this, because I don't quite get the distinction that was made and I think it was when Mr. Harris was questioning you. You were talking about reasonable through rates with such carriers as distinguished from single factor rates; is that the right terminology?

Mr. BEARDSLEY. I am not even sure that that is the right terminology. That is the terminology I used to distinguish a rate which covers the movement in transportation where the services of more than one carrier is required. When I say "single factor rate," I am referring to a rate where, we will say, a carrier has rights between New York and Chicago and he files a rate for that transportation where there is no necessity to require any other carrier to perform that transportation in conjunction with his operation. Now, what this bill does, it says with respect to that fellow who has these rates between New York and Chicago and who wants to file a rate with respect to that movement over his line only, that he no longer shall have the right to sit down with his competitors and say, "Well, let's all charge $1.37"; but with respect to the carrier who operates—and I may be using the wrong geographical points—but just for purposes of illustration let's take New York City to Buffalo, and in order to get from Buffalo to Chicago this bill says this shall remain in effect.

Mr. BROTZMAN. One more question. This may be in the testimony last year, but I have not had an opportunity to read the record.

Going back into legislative history, how did this exemption come about initially that is the subject of H.R. 4700?

Mr. BEARDSLEY. It came about I suppose—I don't pose as an expert in the political arena, but the most determined opponents of any

Federal regulation of motor truck transportation were the farm community and the interests representing farmers. I think that is a practical matter Congress, again for political considerations, felt that these exemptions had to be in the law in order to satisfy those interests in order to get the law passed. That is my interpretation of it. There probably will be some disagreement on that.

Mr. BROTZMAN. I have heard your discussion here about the attitude there is toward the exemption and I wondered how it initially got in.

Mr. BEARDSLEY. Nothing that the regulated motor carriers sought.

Mr. BROTZMAN. Now I want to be sure I understand one more statement that you made. In the event H.R. 4700 should proceed in the legislative process, it would be your recommendation that rather than the language contained on page 3, that we are talking about in regard to antitrust legislation, you believe this should be enlarged to encompass all of the existing antitrust laws?

Mr. BEARDSLEY. That is the effect of it generally. We think, as I have pointed out in my testimony, that actually some of these laws that are said to be applicable really don't apply, because they refer to the sale of commodities and things of that nature. We think those laws should be broadened to include transportation. But again—if I am saying it for the hundredth time, excuse me—that is not the course we want to follow.

Mr. BROTZMAN. No, I think—if I understood your remarks—that you, if it gets down to the choice between the regulation by the Interstate Commerce authority, or if you shift over and follow road B, then you would like to see the full power and impact of the antitrust laws brought into play; is that correct?

Mr. BEARDSLEY. Yes, sir.

Mr. BROTZMAN. I have one more question. The exemptions that are being considered here under H.R. 4700; are they coextensive with the exemptions that presently are in the act?

Mr. BEARDSLEY. They are more than coextensive. They would broaden the exemptions in the bulk field considerably.

Mr. BROTZMAN. How much further do they go?

Mr. BEARDSLEY. Well, for example, the present exemption as I understand it includes commodities transported in bulk in the trade in 1939, I believe. That is one of the present exemptions. The major one is this, that the water carriers transporting bulk commodities are limited to not more than three such commodities. If they have four, they lose their exemption on all of them. This exemption just says everything, whether mixed with other freight or not. Even in the agricultural field the truck operator who carries a load of agricultural commodities mixed with, let's say, some regulated freight, loses the exemption with respect to the agricultural commodities which are mixed in with the regulated freight. It is all regulated then. This again says the whole thing goes.

So that was my purpose in pointing out that the railroads are not really asking for equality, even aside from this question of how much they are in the trucking business. They would be able because of the nature of their operation to transport hundreds of thousands, literally millions, of pounds at one time in one train, whereas the ability of the truck operator to transport these commodities would be limited by

the size and weight laws of the State. In most instances you would be comparing a figure at the utmost of 35,000 to 40,000 pounds with one that could run as high as millions.

There is one further item on the agricultural exemption. Presently, because of the rollback in the law in 1958, Congress added certain exempt commodities which had been theretofore exempt and put them under regulation, such as bananas, and so forth. As we understand this bill, that would again take the control out from under the regulation.

Mr. BROTZMAN. Thank you, Mr. Rogers.

Mr. ROGERS of Texas. Mr. Long.

Mr. LONG. No questions.

Mr. ROGERS of Texas. Thank you, Mr. Beardsley, for your testimony.

The committee will remain this afternoon, and our first witness will be Mr. James F. Pinkney, chief consel of American Trucking Associations, and he will take the stand at 2 p.m.

The committee will stand in recess until that time.

(Whereupon, at 12:20 p.m. the committee recessed until 2 p.m. of the same day.)

AFTERNOON SESSION

Mr. ROGERS of Texas. The Committee on Interstate and Foreign Commerce will come to order for further consideration of pending business and James F. Pinkney, chief counsel of American Trucking Associations is the first witness.

Mr. Pinkney, if you will identify yourself, you may proceed.

STATEMENT OF JAMES F. PINKNEY, CHIEF COUNSEL OF AMERICAN TRUCKING ASSOCIATIONS; ACCOMPANIED BY F. G. FREUND, DIRECTOR OF TRAFFIC

Mr. PINKNEY. My name is James F. Pinkney, appearing as have the preceding witnesses for the American Trucking Associations, Inc., 1616 P Street NW., Washington, D.C.

Mr. Chairman, I have asked to have here at the witness table Mr. Fred G. Freund, director of traffic of the American Trucking Associations. I have done so as some of the matters we have discussed this afternoon involve rather technical rate problems and he is an expert in that area.

Mr. ROGERS of Texas. Is he identified now as being an employee of American Trucking Associations?

Mr. PINKNEY. I believe so; director of traffic, American Trucking Associations.

Mr. ROGERS of Texas. Thank you.

Mr. PINKNEY. My portion of the ATA presentation deals with H.R. 4701, the so-called omnibus bill. By comparison with H.R. 4700, but little attention was given it by the witnesses who appeared before you last year. The same is true of all that has been said and written about the President's transportation message. But as far as we are concerned this bill should be examined very closely as it too contains proposals of great consequence, some good and some bad.

H.R. 4701 is an omnibus bill. It covers eight widely varying subjects—running the gamut of rate and service experiments, piggyback, through routes and joint rates, civil forfeitures, Federal-State en-

forcement cooperation, air carrier reparations, transportation of mail, government rate simplification, and administration of the railroad loan guarantee program. Only some of these subjects have a vague relationship with any of the others. There is no common thread which appears to tie all of them together.

For us this bill is a mixed bag. So, to avoid confusion, our presentation will take section by section those subjects in which our industry has a direct interest—those subjects which, if enacted, would directly affect our ability to operate in the public interest.

EXPERIMENTS BY COMMON CARRIERS IN RATE, CLASSIFICATION, AND DOCUMENTATION SYSTEMS

Section 2 of H.R. 4701 is purportedly designed to empower and encourage experimentation by common carriers. The experimentation is for the purpose of testing new service combinations or arrangements, simplified documentation, and plans for different or simplified rates bases and freight classifications.

We have not seen any substantial demonstration of the need for including this language in the legislation. True, the testimony of Under Secretary for Transportation Clarence D. Martin, Jr., in his appearance before this committee last year on the almost identical H.R. 11584, made the observation that—

> if common carrier service is to improve, if transportation is to progress with improving technology and national growth, we must have innovation.

He went on to say:

> The essence of modern science is the experimental method. Transportation must experiment continuously if new service potentials are to be developed.

However, the ony reason he gave for including this particular proposal was that it would remove all doubts as to the authority of the regulatory agencies to allow experiments.

Experimentation in simplified documentation, freight classifications, and a simplified basis of rates that result in efficiency and economy is, of course, desirable. However, the carriers are now free to experiment with new and improved methods of performing service and ratemaking within the framework of existing law. The Commission has and continues to encourage carrier experiments designed to improve service or lower cost whenever this could lawfully be done within the framework of the Interstate Commerce Act. It has within the past 5 or 6 years approved such innovations as piggyback service and rates, multiple car, trainload rates and others. It has, however, kept those rates within the framework of existing law, see *Contract Rates, Rugs and Carpeting from Amsterdam, N.Y.*, 313 I.C.C. 247, 254. In condemning the rates the Commission said:

> Constructive ratemaking innovations by carriers are desirable so long as they are consistent with the standards of lawfulness in the act and the national transportation policy. As in all other situations, the lawfulness of innovations of this kind must be determined based on the controlling circumstances in particular situations.

The decision of the Commission in this case was sustained in *New York Central R. Co.* v. *U.S., et al.*, 194 F. Supp. 947 and 368 U.S. 349.

In another recent case approving experimental rates on coal the Commission said:

Although this present proposal is not in the traditional concept of ratemaking, that in itself affords no basis for disapproving it. It should be understood, however, that our finding on these unusual facts and circumstances does not constitute a precedent for the indiscriminate use of this form of ratemaking. *Innovations by carriers designed to improve their competitive position are desirable so long as they are consistent with the provisions of the act and the national transportation policy.* As in all other situations, the lawfulness of innovations of this kind must be determined based upon the controlling circumstances and conditions, including the material economic as well as the physical facts of record, in particular situations. [Emphasis added.] Coal to New York Harbor Area (311 I.C.C. 355, 371 (1960)).

That the law as it presently stands fully encourages experimentation under proper regulatory agency supervision is further borne out by the decision last year involving the simplification of rates on shipments weighing up to 300 pounds. There the Commission, in approving those rates, said:

The respondents have made a bold and imaginative approach toward solving the chronic small shipments problem. They concede that their constant charge proposal is marred by minor defects and irregularities. The detailed recitation of these imperfections by the shipper protestants should prove helpful to all concerned. Constant charges are proposed as an experiment in ratemaking and the respondents ask only that the plan be given a fair trial. They welcome constructive criticism and offer to work both with the shippers and the Commission in making changes as the need becomes apparent. General Increases—Eastern Central Territory (316 I.C.C. 467, 485 (1962)).

From all of the cases which the Commission has handled involving improvements of service, it is obvious that under the present law the carriers can and do initiate experiments and innovations in ratemaking. It would appear in the light of these cases that the proposed legislation is not necessary to achieve the objectives set forth in H.R. 4701.

In other words, Mr. Chairman, we believe the section to be unnecessary and that it might prove confusing to the Commission as it would have to be deemed to mean something. We suggest and urge that this particular recommendation not be adopted.

Section 3 is intended to carry out the President's recommendation that all carriers should have the right to—

ship vehicles or containers on the carriers of other branches of the transportation industry at the same rates available to noncarrier shippers.

While we strongly endorse this objective, the proposal itself is seriously defective. Modern piggyback service which is the innovation responsible for this recommendation involves some rather complex and complicated carrier-shipper relationships. It is far easier to recognize a need for broadened use of the service than to enunciate a proper solution of the problem created. Among other things to be considered is the maintenance of carriers as carriers and not to dilute their position by forcing them into a behavior pattern which is basically shipper oriented. We earnestly desire an answer to this problem, but we feel that the solution should be one which treats carriers as carriers.

In addition, we think the langauge of the bill needs to be amended so as to prevent it from enabling carriers now unable to compete between certain points because of restrictions or circuitry involved in

their operating franchises, to become competitive with other carriers between such points, without any showing of a need for additional carrier service.

At the present time there is underway before the ICC a comprehensive proceeding, *Ex Parte No. 230*, involving proposed rules and regulations to govern "piggyback" operations, including rules to govern intermodal piggyback as well as to cover the publication of rates and charges for all phases thereof. We believe that once this proceeding is concluded, and rules governing piggyback operations have been adopted, it will be easier to suggest appropriate language to amend section 3 of this bill in order to provide the safeguard referred to.

I would also point out, sir, as I believe some of us mentioned to you last year, we had some conversation going on among the carrier interests in particular who are concerned with this section looking toward an agreed solution. Those conversations are still underway and operating as you suggested the other day under the auspices of the Transportation Association of America and it is possible we may come up with a solution that would be agreeable to all concerned, but more particularly, as I have pointed out, we think that the ICC proceeding is one that should be permitted to be concluded before any final action would be taken on this particular recommendation.

Now, the next matter is the establishment of through service and joint rates, joint boards.

Section 4 declares it to be in the national interest to encourage and promote through service and join rates, fares and charges between carriers of all modes. In implementing the recommendation, the language of section 1003 of the Federal Aviation Act of 1958 (49 U.S.C. 1438) would be used as the vehicle for carrying out this objective. We believe that carrier service and rate cooperation is highly desirable and we support this proposal.

While we are in agreement with the recommendation, we suggest the following clarifying changes:

Subsection (d) should be amended to make it clear that a carrier party to joint rates filed in accordance with the provisions of section 1003(d) is not bound to charge the same rates if it performs the entire transportation itself.

Under the language of the bill the carrier party to joint rates would be required to apply the joint rates "for transportation between points served by it and points served by any other such carrier." It could be contended under this provision, for example, if a motor carrier with authority to transport goods from Indianapolis to Los Angeles also had joint rates with an airline calling for an interchange at Chicago, that those joint rates would govern an all-motor movement. Quite obviously, this is not the intent. This deficiency could be cured by inserting after the word "transportation" on line 21 on page 6 the phrase "under the tariffs so filed."

Section 1003(3) provides that "matters relating to such through service and joint rates, fares or charges may be referred to a joint board." This would make the referral permissive only. Certainly no one agency should be allowed to determine alone whether a joint rate with a carrier regulated by another agency is lawful and to determine whether the division thereof between the carriers is equitable. It is, therefore, suggested that the word "may" be deleted and the word "shall" be substituted therefor.

Finally, and I believe this matter is of considerable substance, it is also suggested that subsection (f) be amended to require joint boards to adhere to the national transportation policy in exercising their regulatory functions. As a matter of fact, the policy itself should be amended to apply to all modes of transportation by whatever Federal agency they be regulated and to require that the provision of all Federal statutes regulating transportation be administered with a view to carrying it out.

ENFORCEMENT AGREEMENTS WITH STATES ON HIGHWAY TRANSPORTATION

Section 5 would authorize ICC cooperation with States in order to better enforce "the economic and safety laws and regulations of the various States and the United States concerning highway transportation." The purpose of this is to encourage cooperation and the exchange of information between the Commission and State regulatory bodies in order to bring about better enforcement of the Motor Carrier Act. We are wholeheartedly in favor of this proposal.

I might add that the particular problem that I think makes this especially important is that, under the present law, the agents of the Interstate Commerce Commission are prohibited by law from furnishing to the State, enforcement information in the ICC files. It has led to—not exactly bad feeling—but some friction between the agencies of the Federal and State Governments in an area in which all are commonly concerned and that is the area of the enforcement of the law and particularly of such things as the safety regulations.

EXTENSION OF CIVIL FORFEITURE PENALTIES OF THE INTERSTATE COMMERCE ACT TO VIOLATIONS INVOLVING LACK OF OPERATING AUTHORITY

On this one we are partly in favor and partly opposed to the language as it now stands.

The Interstate Commerce Act presently allows the ICC to bring civil proceedings against motor carriers for certain types of administrative violations of the Interstate Commerce Act. Motor carriers found to be violating these administrative provisions may be fined $100 for each offense and $50 for each day of a continuing violation.

Section 6 of the bill would extend the civil forfeiture provisions of the act to include violations of operating authority and the Commission's safety regulations and, in addition, would increase the penalty to $500 for each offense and $250 per day for continuing violations.

The trucking industry supports extension of the civil forfeiture procedure to cover violations of operating authority, and we support an increase in the fines from their present level up to $200 for a single violation and $100 for a continuing violation—the fines proposed in the bill before you last year, which also passed the Senate, S. 2560.

However, we do not feel that the civil forfeiture procedure should be extended to violations of the ICC's safety regulations. It seems unconscionable to us to require a motor carrier to pay a fine of $500 simply because he has unintentionally violated some obscure and highly technical provision of the ICC's detailed safety regulations.

Considering the substantially increased fines contemplated by this section, or even substantially increased fines recommended last year

in S. 2560, $200, and the possibility that a great many unintentional minor safety provision violations can daily occur in a large carrier fleet, we believe it to be basically bad law to place in the hands of any agency the potential power to move against a carrier in a civil action and possibly obtain fines running into thousands of dollars a day.

Let me hasten to add at this point that I speak personally, and I, for my group as a whole, want to say we have the highest respect for the Interstate Commerce Commission and the integrity of the men on it. We do not anticipate unreasonable action from it. As I point out here, we know it is a reasonable body and would, of course, use judgment in seeking the imposition of such fines but we definitely believe it to be unwise, as a general principle, to give any agency and its agents in the field a virtual power of life and death over carriers which could be exercised as a result of unintentional and sometimes unavoidable minor infractions of the very complex and comprehensive safety regulations of the Commission.

Those regulations are contained in a book of over 100 pages in small print and they deal with many things including the failure to have all lights on the vehicle lighted at any given time.

Under this proposal the carrier could be punished by a fine of $500 for the burning out of a light bulb. We have pointed out the fact that many of the requirements of the regulations necessarily are in the same classification as local and State traffic regulations. As such, violations can involve no more than a clearance light ceasing to function after a vehicle is dispatched on a run. This in itself is a minor thing albeit punishable by fine but I would like to call your attention also to a double jeopardy aspect which quickly comes to light in the proposal to place such violations under the civil forfeiture procedure.

One of the safety rules (192.3) makes every State and local law, ordinance and regulation, from parking, overparking to exceeding the speed limit, a part of the Motor Carrier Safety Regulations. Violations of these makes the motor carrier, of course, subject to punishment by the State and local authorities. As long as enforcement of the safety rules is a criminal law matter the constitutional prohibition against double jeopardy appears to act as a bar to more than one punishment for the same offense. If the Commission is now permitted to treat violations of the safety rules as a civil matter, carriers could easily be put in the position of being fined twice for a single infraction, once at the usual $10 per offense State level for a minor infraction but $500 for the same offense at the Federal level. We think this is unfair.

In addition to the double jeopardy aspects it is found that a number of the safety regulations set up performance standards with the means of meeting them left to individual ingenuity and judgment. For example, rule 193.71(K)(3) provides in part:

> Swaying. (i) Adequate provision shall be made by design and installation to provide against swaying or lateral movement of the towed vehicle relative to the towing vehicle.

Engineers usually develop several ways to accomplish the performance standard without agreement among themselves as to the adequacy of one particular means; thus there is always an unresolved question even among experts. And this includes or could include a difference

of opinion as to "adequate means" between Commission engineers and those operating the equipment and maintenance divisions of the various motortruck fleets. While alleged infractions of such rules involving a great deal of technical engineering knowledge and practice without any definite yardstick as a means of measuring black and white are probably impossible to use as a basis for criminal prosecutions where a reasonable effort is made to comply, such reasonable compliance attempts might well fail as a defense in a civil action.

We believe that the statute should remain as it is insofar as safety provisions are concerned. The Interstate Commerce Act now contains a criminal enforcement section and additionally the Commission immobilizes vehicles found to be unsafe.

Sections 5 and 6 of H.R. 4701 are enforcement matters. They are directly related to the languages contained in S. 2560 which passed the Senate during the 87th Congress, and which this committee was in the process of considering when Congress was adjourned last year.

There were in that bill other provisions which would go a long way toward wiping out illegal for-hire motor carriage. For example, a provision relating to State registration of interstate operating authority and a provision permitting carriers to help themselves through injunctions against those operating without any color of right.

In addition, that bill also provided for the nationwide service of process in enforcement cases, a longstanding legislative recommendation of the Interstate Commerce Commission. The provisions of S. 2560 itself by no means exhausted the legislative possibilities in improving the enforcement language of the Interstate Commerce Act and the legal environment for action against the "gray area" operator, or the illegal operator.

This committee, in considering H.R. 4701, could well take the time to go into this in greater detail, since this is clearly one of those areas of action which will help strengthen the common carrier transportation system. We are prepared to discuss these matters at length and in detail with the committee at any time it desires, whether it be here and now, or at sometime in the future.

I might say, Mr. Chairman, this particular movement started 2 years ago with hearings on the plight of the common carriers. Most of these provisions are supported jointly by the railroads and motor carriers. It was revised last year and I am talking first about 1961. It was revised last year and hearings progressed, hearings were held on the Senate side and the Senate passed the bill. We would certainly think that this is an area in which we would like to see this committee act this year as we think here is one on which considerable progress can be made toward alleviating some of the serious problems confronting the common carrier.

SIMPLIFICATION OF GOVERNMENT TRANSPORTATION RATES

Section 9(a)(1) of the proposed legislation would amend subsection (a) of section 321 of title III, part II, of the Transportation Act of 1940, as amended, which excerpts from the competitive bidding requirements of section 5 of title 41, United States Code, 1934 edition, transportation services procured for the Government from any common carrier lawfully operating in the territory where the sevices are to be performed.

The proposed revision would also authorize the head of an agncy or such other persons as he may designate to negotiate the provisions and prices of contracts, agreements, or other instruments for the purpose of procuring transportation, and would permit the Postmaster General to enter into contracts with common carriers for the transportation of the mail, without the necessity of advertising for bids.

Speaking of that portion of the proposed legislation regarding the transportaion of mail, the proposal would bring into being separate and distinct pricing procedures between two highly competitive modes of transportation—motor and rail. Today mail is being transported by the rails for the Post Office at rates determined by the Interstate Commerce Commission to be just and reasonable. Under this proposal motor carriers would transport the mail under contract at prices negotiated between the parties without any consideration by the ICC. Since the apparent theme of the President's message is to eliminate inequities, it would appear that both modes should be put on the same basis. It is suggested that the basis be the same as that now applicable in connection with railroads.

Bills have been introduced, sir, in the Congress—in the 86th Congress, H.R. 2752—which would operate bidding transportation of mail by truck, which, as passenger trains are being removed, it has become increasingly important this be under the same general type of regulation as the movement of mail by the railroads under the supervision of ICC. I might say, I understand that the vice president of one of our largest motor carriers—Consolidated Freightways of the West Coast—is coming into town next week, and will appear before you to speak specifically on this question of the mail transportation.

The proposed new language of paragraph 2, of section 9(a), would authorize the Administrator of General Services Administration, and the Secretary of Defense, or their designees, on behalf of the civil and military agencies, to "negotiate, agree to, contract for, engage, or otherwise establish simplified rate structures" for the transportation of property for the United States, such transportation to be for periods not to exceed 1 year, but renewable for successive 1-year periods. It would be left to the Administrator of General Services, or the Secretary of Defense, or their designees, to determine, first, that the prospective simplified rate structure is in the public and Government interest and, second, that the rate structure may reasonably be expected to result in "administrative and transportation costs" to the United States "lower, or no subsantially higher," in the aggregate, than costs normally applicable.

A further prerequisite would be the conducting of research and experimentation for the purpose of devising practical systems to make rate publication and ascertainment less costly, as well as developing systems that would be suited to condensed tabulation, or application of automatic data processing.

Stripped down, the net result of this proposal is to establish, for the Government, another means of obtaining reduced rates for application on Government traffic. This language would compound the present unsatisfactory situation under section 22 of the act. Under the proposal, the Government could procure transportation under three different methods: (1) the conventional method through carrier rate proceedings and tariff publication, (2) section 22, which, of

course, provides for free or reduced rates for the Government, and (3) through contracts or agreements. For the commercial shipper, this would be utopia; for the world's largest shipper—the United States—it provides a formidable new weapon for procuring transportation services at reduced prices.

Under the nebulous standards set forth in the proposal, the Administrator of General Services and the Secretary of Defense, or their designees, would at once become the judge, jury, and prosecutor, to negotiate and to establish—prescribe—rates to be charged for the transportation of U.S. Government property, a situation without precedent in the history of regulation.

Section 9 of H.R. 4701 is unnecessary—in our judgment—unsound, and undesirable. No legislation is needed to permit the Secretary of Defense and the Administrator of General Services to encourage experimental rates and services. In addition to the authority discussed under section 2 of the bill—previously discussed by me under section 2 of the bill—common carriers now have authority under section 22 of the act to move traffic for the United States at free or reduced rates, as well as under simplified rate structures and without regard to existing classifications. Moreover, the motor carriers are exercising this authority. The Honorable Robert B. Conrad, Commissioner of Transportation and Communications Services, General Services Administration, so testified last year in hearings on H.R. 11584:

> For GSA, many motor carriers have published numerous simplified "freight—all kinds" (f.a.k.) rates in section 22 quotations applicable from Federal Supply Service depots to other Federal agencies. *These rates are about 30 percent lower than the class rates and carry about 70 percent of the depot outbound traffic.* A primary advantage of the GSA f.a.k. rates is the lack of complication arising from differences in transportation charges between commodities in the mixtures described on each bill of lading. Under f.a.k. rates, transportation charges vary only by weight and distance. These rates are well adapted to the automated procedures developed for use in GSA depots, which provide for maximum consolidation of numerous commodities in the same shipment, and for machine preparation of bills of lading and other shipping papers. [Emphasis added.]

The rail carriers are also exercising this authority. A recent example is their section 22 quotation, designated E.I.C.C. No. 1677, filed by the Traffic Executive Association, Eastern Railroads, of New York City. This publication names carload rates that do not vary depending on the kind of freight—that is, are applicable on freight of all kinds, with limited exceptions, such as live animals, explosives, and other unusual types of commodities. These rates are named as a stated amount for a car of 60,000 pounds on a mileage basis, with an additional stated charge per 100 pounds on amounts over 60,000 pounds.

In procuring the movement of traffic, the Government is free, under existing law, to give traffic only to those carriers who tender quotations under section 22 in terms of such simplified rate structures as it can get carriers to agree to. Certainly the Government is going to ask carriers to make tenders in terms of a particular simplified rate structure only if it has first determined that it can reasonably expect the use of the simplified structure to be advantageous to the Government from the standpoint of administrative and transportation costs. Certainly the Government is going to make such a deter-

mination after research, and is going to be guided by its experience with a particular structure in the development of other structures.

In pointing out the existing freedom of the Government to experiment with simplified rate structures under section 22, we do not imply that section 22 is desirable. On the contrary, the basic position of the motor carrier industry is that it should be repealed altogether. But, whether or not it should be repealed altogether, it certainly should not be expanded. Section 9 would expand it.

First, subsection 1 authorizes continuing contracts for transportation between the Government and common carriers by motor. Such contracts are incompatible with the fundamental concept of common carriage. Second, subsection 2 authorizes the Administrator of General Services and the Secretary of Defense, or their designees, to "negotiate, agree to, contract for, engage, or otherwise establish simplified rate structures."

Since common carriers are required by their certificates, issued under the Interstate Commerce Act, to render service to anyone upon demand, the result of this would seem to require common carriers to render services to the Government in accord with such simplified rate structures as the Government chooses to establish.

The net effect of section 9 is to transfer to the U.S. Government, in its capacity as the world's largest shipper, the ratemaking authority which the Interstate Commerce Act vests jointly in the carriers and the Commission. The carriers would no longer have the right to exercise their managerial discretion to initially establish rates, charges, classifications, rules, and practices for transportation service over their lines, a right that any seller of service has, and which the Interstate Commerce Act has confirmed. Since subsection 2 of section 9 provides that Federal transportation regulatory bodies shall employ the techniques of the Administrator of General Services or the Secretary of Defense, the Interstate Commerce Commission will no longer have the right that it now has under the Act—namely, to review the rates, charges, classifications, rules, and practices initially established by the carriers to determine whether they are just and reasonable under the standards contained in the Act. If the Commission finds that they are not, it now has the right to prescribe others that are.

It is obvious that the Administrator of General Services and the Secretary of Defense, as buyers of transportation service, would devise rates and rate structures designed to produce the lowest cost to the Government. Their obvious aim would be cheaper rates for the Government rather than to assure that the revenues of the carriers from the transportation of Government traffic serve the general public interest by making a fair contribution to the overall transportation burden. This will result in an unfair share of that burden having to be carried by the shipping public at large.

We think this self-evident. The only specific standard that section 9 would require the Administrator and the Secretary to observe is that the simplified rate structure produce administrative and transportation costs to the United States lower or not substantially higher in the aggregate than costs normally applicable to transportation of Government traffic. While the simplified structures are required to be in the "public and government interest," this phrase is far too vague to be a workable standard. Moreover, the Government's interest as a

shipper in reduced transportation and administrative costs is obviously not the same as, and often in conflict with, the overall public interest. That interest expressed by the Congress in the National Transportation Policy and the ratemaking sections of the Interstate Commerce Act calls for a safe, adequate and efficient overall transportation system operating under sound economic conditions.

Tariff rates are fixed and so related to one another that all traffic will bear its fair share of the total transportation burden. There must be taken into consideration the cost of moving the traffic, the value of service to it, and the grand purpose of the act to promote the commerce of the United States by transportation rates and practices that will facilitate the free movement of all commodities in commerce.

It follows that to the extent that Government traffic moves at less than tariff rates, it is failing to bear its fair share of the overall transportation burden. This is a basic reason why the industry supports the repeal of section 22. But at least as section 22 now reads, carriers are free to decline to move Government traffic at less than tariff rates or to move it at such rates less than tariff rates as they think proper in their managerial discretion and in the light of their duty under the act to charge just and reasonable rates.

Section 9 would require both the carriers and the Commission to permit the Government to move its traffic at whatever rates its own immediate interests as a shipper dictated. The enactment of section 9 would create an intolerable situation. The Interstate Commerce Commission would be required to employ the techniques developed by two procurement agencies of the Government under dubious standards. Moreover, each agency would be free to develop its own standards under its own theories, which could be expected to differ and conflict with another. Only confusion, harassment of the carriers and damage to the general shipping public would result.

There is no longer any justification in normal situations for the Government to receive preferential rate treatment from carriers. The proposal in section 9 would only aggravate an already unfair preference for Government traffic. It is time, it seems to us, for Congress in the interest of overall equality to place Government traffic on the same footing as traffic carried for the general shipping public.

Short of the complete repeal of section 22, we suggest that consideration be given to an amendment thereof to provide that the carriers may establish by appropriate publication and filing with the Commission rates, charges, classifications, rules and practices applicable only to Government traffic, with the power lodged in the Commission to accept, reject or modify them, using the standards in the act and the national transportation policy. This would permit the Commission to approve, or indeed to prescribe, such experimentation as it found in harmony with the basic requirements of the act as well as to prescribe experimentation under its existing authority to prescribe rates, charges, classifications, rules and practices at the instance of either the carriers or the Government or any other interested person.

As I have already pointed out the carriers now and the shippers jointly can and do initiate experiments in service and rates and rules and practices and that the Commission can and does prescribe such experimentation when appropriate under existing law. This would

serve the public interest as expressed in the national transportation policy and the act as well as lodge control in a single agency whose expertise is certainly greater than that of the Administrator of General Services and the Secretary of Defense or their designees in this highly important area.

Thank you gentlemen, for your consideration during this complicated discussion of these widely varying but nonetheless important aspects of transportation.

The CHAIRMAN. Thank you.

Mr. Rogers.

Mr. ROGERS of Texas. No questions.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

You made a very good contribution, Mr. Pinkney, for our consideration on the omnibus bill. You made some good suggestions.

However, you went outside of the written text to comment that the ICC, you believed, or your organization believes, did a good job.

Mr. PINKNEY. Yes, sir.

Mr. YOUNGER. We have had one of your witnesses say that in his opinion they have not done a good job in controlling the minimum rates. We have had one other witness that said he thought they had done a fair job.

Now, is this a new opinion or is this the opinion of your organization over a continual period?

Mr. PINKNEY. Mr. Younger, I expect we all must speak personally on this particular question but it seems to me there is a common theme running through all of the testimony you heard. We didn't come up here with any rehearsed position on that. That theme is that, of course, we quarreled with some of the actions of the Commission and the area in which I expect we quarreled most with them is in their failure to exercise minimum rate powers to the extent that we think at times they should have exercised them. I expect railroads and other carriers have quarreled with them on the same ground.

But in the overall picture we think the Commission has done a good job in the cases it has handled and we, as has been reiterated here time after time, we think it absolutely essential that its minimum rate power be retained so there may be a referee in this picture, even though that referee may call one wrong play from time to time.

Mr. YOUNGER. This is not true, is it?

Mr. PINKNEY. No, sir. I have held the opinion for many years.

Mr. YOUNGER. Is Mr. James F. Fort, counsel for the American Trucking Association—did he speak for the Trucking Association at one time?

Mr. PINKNEY. He still does. He is on my staff and we work closely together.

Mr. YOUNGER. Here is what he said in appearing before the platform committee of the Democratic National Committee on June 24, 1960, and I quote from the statement:

> However, both of these two basic safeguards have been eroded by recent decisions of the Interstate Commerce Commisison. This Commission which has regulatory jurisdiction over transportation, is composed of 11 members, all of whom have been appointed by the present Republican administration.
>
> This erosion has meant a major and significant change in the ICC's philosophy and approach. There has been a steady whittling away of the safeguards against

common ownership and operation of more than one mode of transportation. There has also been a drastic revision of the ICC attitude and policy with respect to destructive competitive ratemaking, causing chaotic conditions throughout the transportation industry. This situation has become so serious that it is being investigated by a subcommittee of the Senate Interstate and Foreign Commerce Committee headed by Senator Warren G. Magnuson of Washington.

The present attitude and policy of the ICC, which reflects the historic attitude and policy of the Republicans is contrary to the purpose and intent of the national transportation policy, the Interstate Commerce Act, and most certainly the basic antimonopoly principles of the Democratic Party.

Apparently, at that time he wasn't very strong for the ICC, was he?

Mr. PINKNEY. Mr. Younger, I can't speak for him at that time. I was not present on that occasion. Let me say this: We have felt from time to time the Commission was leaning too far in one direction or another. I suspect, or I think, that took place shortly after the last big go-around on these exact same issues back in 1958 when the rule of ratemaking was changed.

I would say that at that time, had you asked the trucking industry, they would have said that the Commission swerved or veered sharply from its previous course and went far too far in the other direction. At that time there was pending before the Senate a bill known as S. 1197, which would have tightened up on the rule of ratemaking to some extent to prevent the Commission from being as liberal as it was then thought to be in the granting of rate reduction. I think this Commission had veered as it naturally will as personnel change from year to year. But I stand by my statement that I personally have the highest respect for the Commission. I don't think its judgment is 100 percent right in every case, but I would certainly hate to see our transportation system operated without it.

Mr. YOUNGER. I think that is a very fair and direct statement. We have had some varying testimony.

Mr. PINKNEY. I expect we could get some operators up here who would testify they don't think the Commission is any good at all because of some personal experience.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Since you mentioned S. 1197, the statement made before the platform committee of the Democratic National Committee, which I had the honor of being a member of, we all know the purpose of these platform committees. But a whole group of ladies came to see me and they were tremendously interested in 1197 a couple of years ago, I support, 3 years, I don't know. They represented people in the motor carrier industry, and they were very frank in their statement about the Interstate Commerce Commission, and I listened to them at great length and when they had concluded I told them I was glad to have their comment. And with reference to what they had to say about the Interstate Commerce Commission they should have been in the office a few days ago when the railroad people were in there and heard what they said about the Commission.

So I assume that is about the way it goes when we get to thinking about a particular problem under our competitive system.

Mr. DINGELL. No questions.

The CHAIRMAN. Mr. Glenn.

Mr. GLENN. Sir, on page 7 of your statement, you discuss the extension of civil forfeiture penalties of the Interstate Commerce Act and

you say that the trucking industry supports the extension of the civil forfeiture procedure to cover violations of operating authority but not to cover the safety regulations, then, on your next page, you stated that you feel that the ICC is a reasonable body.

Now, do you think we should sacrifice safety because an agency, in an exceptional case, might exercise some stringent enforcement over a minor violator?

Mr. PINKNEY. No, sir. Let me say this: At the present time there are rather serious fines that can be imposed under the criminal section of the Interstate Act authorizing criminal prosecution for safety violations and the Commission vigorously follows up on those and there are many, many criminal violations brought against operators of trucks for violation of the safety provisions. All I am saying here is that it would be unreasonable, we believe, to give any agency, the agency, and that is what the bill would do, the right to go into a Federal district court in a civil proceeding, not involving intent, willfulness, and those factors present in criminal proceedings, and impose a fine of $500 for the burning out of a single light bulb, and that is exactly what this does.

My personal philosophy, sir, on this is, I would not even give my own father the power of life or death over me. I think it is basically wrong to do it.

I know these men would act reasonably. I am not sure their agents would in all circumstances. They might be after a particular truck operator, and they could, over a period of weeks, let us say, uncover hundreds of minor violations by a motor carrier, including possibly speeding, overparking, all of which are violations of the act punishable by a $500 fine, and we simply say it is too drastic a power to give any Government agency with fines of that magnitude.

We take a different view, of course, about the violation of operating rights, one of the great problems of the common carrier system being of course the illegal movement of freight on the highways, particularly on the highways. There we think the fines should be substantial. We think that should be stamped out. We also think that safety violations should be stamped out but believe this proposal goes too far insofar as safety rules are concerned.

May I add one further word in the interest of the trucking industry? We maintain in ATA an active safety program for the industry. I think the record of the drivers of the organized trucking industry on the highways is an enviable one. They do a fine job and we are tremendously interested in safety. We just don't believe it would be wise to set up penalties as stringent as these for what could be comparatively minor infractions of the law.

Mr. GLENN. Of course, you are referring to an infraction such as a light bulb, but what I am concerned with is the use of the highways, and I use it considerably going back and forth from my district, and I am amazed at the speed of some of the large trucks on the highways—70 miles an hour or better—in an extreme violation of the signs posted along the roads; and how they get away with it, I don't know, but they do it time after time, and something should be done to stop this sort of thing.

I think we ought to increase the power of the ICC in safety regulations.

Mr. PINKNEY. I quite agree with you to the extent that our trucks engage in speeding that they are wrong and should be punished. The punishment, generally, though, for speeding is going to have to come from the State officials who also have the duty to enforce them. Most of them are enforced through the State enforcement people. The ICC does not check on speed, incidentally.

Mr. YOUNGER. In our hearings before, was it not true that a majority of those violations of safety, and so forth, were by the exempt trucks, the ones that had not been examined, that had poor brakes. I know of a case we had up in New Jersey with one of the itinerant truckers who ran into a family car and killed all those in the car. He was not under regulations at all. Is that true?

Mr. PINKNEY. I believe, sir, that the record of our organized regulated trucking industry is far, far better than that of the unregulated segment. But on the other hand, let me say this. The record I believe of the entire trucking industry, including the unregulated section, is probably far better than that of the motorists. Our people are all carefully trained. That is not true of all of the itinerant truckers but it is true of many of them. It is true of many of the exempt carriers. Many of them look out for safety.

Mr. GLENN. Thank you. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Moss, do you have any questions?

Mr. MOSS. No questions.

The CHAIRMAN. Mr. Hemphill.

Mr. HEMPHILL. I am sorry I was late. I would like to pursue what Mr. Glenn was pursuing. I often wondered if the trucks had an immunity because I drive along and they pass me at the speed limit all the time. So do Greyhound buses. I thought maybe they had some immunity of some kind. You know of nothing like that, do you?

Mr. PINKNEY. I don't know of anything like that. If they do have, Mr. Hemphill, it would be at the State level.

Mr. HEMPHILL. They do have a good signal system. They turn their lights on when they pass a "whammy" or the policemen on the road but it seems to me they are driving beyond their capability of stopping expecially at nighttime so many times; the buses continue as the worst offenders. They do not care how fast they drive. I followed one bus in some parts of Virginia and he ran 80 miles an hour. I do not ordinarily run that fast but I wanted to know how fast he was going. I went down home through North Carolina where the license slogan says "Drive Safely," and I observed the speed limit and I never passed anybody in 3 hours. Like my friend from New Jersey says, trucks seem to have a carte blanche. Is that the experience you have had? I would like to turn to one other portion of your testimony and I tried to read it, but I am sorry I got delayed. I usually try to read it beforehand. You talked about H.R. 4701, that portion of the legislation regarding the transportation of mail. I think we have this proposition right now, that we gave the Post Office and the ICC at their request certain rights in regard to fixing the transportation costs of mail. I know you are familiar with it.

Mr. PINKNEY. Yes, sir.

Mr. HEMPHILL. They are trying to hand it back to us. I assume from your testimony you prefer that they keep it.

Mr. PINKNEY. The Interstate Commerce Commission?

Mr. HEMPHILL. Yes.

Mr. PINKNEY. Yes, sir. Actually, we are not under that particular law, Mr. Hemphill, but, yes, we would be in sympathy with it. Our position would be to have the Interstate Commerce Commission pass upon these rates.

Mr. HEMPHILL. Thank you, and thank you, Mr. Chairman.

The CHAIRMAN. Mr. Cunningham.

Mr. CUNNINGHAM. I am on the Post Office Committee and I am particularly interested in the matter of transportation of mail and the suggestion that motor vehicles be put on the same basis as that now applicable in connection with the railroads. I would like to have you tell me why it is that you would want these rates determined by the ICC rather than by negotiating.

Mr. PINKNEY. I will try to answer your question, Mr. Cunningham, but I also stated this, I believe, before you came in here.

Mr. CUNNINGHAM. No, I was here from the beginning.

Mr. PINKNEY. I see, sir. We have a witness coming in who I think will be far better qualified to go into the technical details of it. But at the present time the situation is this: The organized trucking industry is tremendously interested in moving the mail but it is strictly on a bid basis with the Post Office Department. There again the rates have gravitated down to a point where the average organized truck line equipped with the necessary terminals, which are expensive and that sort of thing, cannot get into the business. We would like to see a situation similar to that or identical with that of the railroads where the Post Office can deal with the motor carriers with the Interstate Commerce Commission acting as referee to make sure the rates are fair and reasonable for all concerned.

Does that answer the question?

Mr. CUNNINGHAM. That does but I want to go further in clarifying your views. In your view then, with the determination of these rates by the ICC, you might get a higher rate, you might receive a higher payment for moving the mail rather than doing it by competitive bidding?

Mr. PINKNEY. Yes. I think so. As a matter of fact, I would say the principal reason the trucking industry, that part of it well equipped to supplement some of the rail service, to take over some of the rail service now being discontinued, is not in the business of taking mail because of the depressed rates; so if the rates were put on a fair basis, we think there, as in the area of section 22 rates, there would be an increase in the rate levels payable by the government.

Mr. CUNNINGHAM. If it went through the ICC you think rates would be better?

Mr. PINKNEY. I think in many cases, yes.

Mr. CUNNINGHAM. You are not particularly interested in the proposition where there might be so-called competition in the bid situation?

Mr. PINKNEY. No, sir, we are not.

Mr. CUNNINGHAM. You are interested in having the ICC do it?

Mr. PINKNEY. Yes, sir.

Mr. CUNNINGHAM. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Pinkney, you have the bill before you, H.R. 4701, you have that bill before you?

Mr. PINKNEY. Yes, sir.

The CHAIRMAN. Now, section 2 has to do with experimentation and so forth. I have read your comments about it. As I gather from

looking over your comments about it, you really do not see a great deal of need for it. Do you thing that there is sufficient law dealing with this subject now? Is that a correct statement?

Mr. PINKNEY. Yes, sir.

The CHAIRMAN. But I also gathered that you did not have too serious a concern about it. Although there was not great harm to be caused by it, you did not see a need for it?

Mr. PINKNEY. My statement went to the lack of necessity for it, but I do think there is great danger in it, Mr. Chairman. If I may go back and quote from the testimony prepared on the same subject and given over in the Senate last year, I said:

> We endorse and entirely agree with the ICC's comment in which they stated, "We seriously question the wisdom of lending legitimacy to a basically unlawful proposal merely because it is characterized as an experiment."

I went on to say:

> The Interstate Commerce Act is a flexible law under which much has been accomplished in the area of experimental rates and services and we see no need specifically to authorize rate experiments which apparently, could take place outside of the law.

Now, you have situations coming up before the Commission in borderland areas and the Commission would naturally interpret any such authorization as this meaning something of course and I think it might lead to the condonation of what would otherwise be declared unlawful practices.

The CHAIRMAN. Let me give you an example. I think we have pretty much the same viewpoint. I believe that the principle of trying new approaches to any problem should be followed. Under the Federal Communications Act there is a provision which says the Commission shall authorize new broadcasts, new service on radio. A few years ago the Commission came up with an idea it wanted to try pay TV. We had about something like 104 major markets in the United States considered as such at that time. So the Commission came up with a proposal that under the authority of new tests it was going to experiment with pay TV, but it was going to do it in the 104 major markets in the United States.

While we took no position, the committee did take action in expressing a feeling about it. That was no new test. That was not an experimental proposition. That was adopting the principle and putting it into effect throughout the country and establishing that type of new experiment in all the major markets of the country, by doing that, you are adopting it. So we objected to it.

Some thought the legislative committee might have been going a little far in interfering with regulatory agencies. I did not feel that way because I feel they are an arm of the Congress and I feel that they are primarily operating for the Congress; but nevertheless, they changed their position at that time and instead they authorized one community in Connecticut as an experimental pay-TV project. I thought there was some substantce to it. I thought that was the intent. Now I have a feeling that if there is some experiment—a particular thing of that kind in the ICC—if they feel there might be something that they can do to work this new type of service or improved service, they ought to be able to authorize it.

I give you this incident to illustrate to you what I believe ought to be a part of the procedures of these regulatory agencies.

Now, would you object to any specific provisions that would authorize the Commission, either on application or on its own, to permit tests on something new? That is in the way of rates or anything else?

Mr. PINKNEY. It would depend, sir, I think, on the test. It seems to me, Mr. Harris, that the Commission presently has ample latitude—and that was my position, of course, ample latitude to permit innumerable experiments in or under the present laws that exist.

The CHAIRMAN. Have you brought any provisions of the statutes that permit the Commission to conduct these experiments?

Mr. PINKNEY. The Commission has full power in the whole rate area with respect to making rules governing the publication of tariffs, the filing of accounts, the accounting procedure. You have given them great latitude in setting up the rules.

The CHAIRMAN. They have to do it across the board.

Mr. PINKNEY. They do not always do it that way. In the second case I cited—that was the experimental rates on coal—the Commission said, and I repeat what I had on page 3:

> Although this present proposal is not in the traditional concept of ratemaking, that in itself affords no basis for disapproving it. It should be understood, however, that our finding on these unusual facts and circumstances does not constitute a precedent for the indiscriminate use of this form of ratemaking.

We have found the Commission doing that time after time. I have difficulty answering your question because it would depend on what that experiment is. If, for example, that experiment were to permit one of our largest common carriers, whether rail or water or motor, to enter into contracts with some large corporation, thereby under the contract or agreed-rates theory that one railroad, in return for giving the shipper a low rate, the shipper in turn agreeing to give it 75 percent of all of its traffic—even a single instance like that could be very damaging to a lot of interests concerned, both shippers and other carriers.

The CHAIRMAN. It seems to me the motivating thing would be in the interest of the shipper in the effort to develop some new services. That is what I am talking about, is the authority to try something—an experiment, something that is new—it is not necessarily to benefit a shipper or a carrier. It is leading to some new techniques for the general public, is what I have in mind.

Mr. PINKNEY. Well, it would be my personal view that it is far safer for the Congress to lay down broad bounds, but exact bounds, within which a regulatory agency can operate. If there is a necessity for going beyond those for the Congress to act and not leave it to your administrative body to decide how far it may go outside the boundaries of the law as you have laid it down.

That, it seems to me, is what this almost amounts to.

The CHAIRMAN. Well, on experiments, it ought not to be permitted to go outside of the law for any other purpose; that is, except for that limited authority, a trial proposition, being what I have in mind.

Now, section 3, you have discussed, and that has to do with piggybank.

Mr. PINKNEY. Yes, sir.

The CHAIRMAN. What was your position on that, very briefly?

Mr. PINKNEY. We endorsed this idea in principle but we do not believe that the language suggested in the bill is the proper language.

We have striven to come up with the language to present to you in the alternative, but the situation is so complex, so involved, that we came to the conclusion that it would be our recommendation that you await the outcome of the very comprehensive ICC investigation that was undertaken by the Commission on July 2, 1962, known as *Ex parte No. 230.*

We believe that this is this solution.

The CHAIRMAN. How long has it been on?

Mr. FREUND. All of the pleadings have been filed in that case and submitted to the Commission. There is a stack of documents and this thing must be at least 3 feet high. So the Commission has it now. The last pleading was submitted sometime early this month or late last month.

The CHAIRMAN. I am not too sure that it is a sound approach to just sit aside here and wait for the Commission to do something on a particular case.

Mr. FREUND. May I add this, sir?

The CHAIRMAN. Yes.

Mr. FREUND. The Commission has been very reluctant to grant an extension of time once they have set a time for filing of certain pleadings and the thought is from this position of the Commission or the Commissioner that heard this case, that they will expedite it.

The CHAIRMAN. Well, they had better get started if they want any action on it.

Section 4, you have a pretty clear statement on. There were some clarifying changes on that, though.

Mr. FREUND. Yes.

Mr. PINKNEY. Yes.

The CHAIRMAN. Section 5. Is that the section that was section 1 of the same bill, 2560?

Mr. PINKNEY. No, it was not, Mr. Chairman. I don't recall whether it was section 4 or 5, I think, of 2560. I am sorry; I do not have that bill before me.

The CHAIRMAN. Now, this deals with the enforcement by States on transportation. In the States, there is no authority for such an enforcement?

Mr. PINKNEY. That is correct, sir. I do not know of any statute that has to do with Federal-State cooperation in this area. We do have, in the area of granting operating authority of course, the joint board system, and that sort of thing, but in this area, as I pointed out during the course of my testimony, the problem has principally arisen in the area of exchange of information between law enforcement officers at the State and Federal levels.

The CHAIRMAN. What kind of agreements could be entered into on this? Could the ICC make an agreement with the State for its patrol officers to watch these interstate trucks to see they are complying with the safety rules and the load factors, and so forth? What are the agreements that would be involved?

Mr. PINKNEY. The only one that I specifically can think of is the one I mentioned, Mr. Chairman, and that would be an agreement to get around the prohibition on the exchange of information on illegal operations of carriers.

The CHAIRMAN. I was interested in that statement. Do you mean that the Ohio Commerce Commission is prohibited by law from advising the Interstate Commerce Commission of an illegal operation?

Mr. PINKNEY. No, it is the other way around, the Interstate Commerce Commission agents are prohibited from disclosing their information to the State enforcement officers.

I have that section here.

The CHAIRMAN. I suppose that is 205 of the act?

Mr. PINKNEY. No, sir, that is not the section I had in mind.

The CHAIRMAN. Anyway, you support section 5?

Mr. PINKNEY. Yes, sir, and in response to your question, about the section, I had reference to that probably caused the present trouble in section 222(d) which reads as follows:

> Any special agent or examiner knowingly and willfully divulging any fact or information which may come to his knowledge in the course of any examination or inspection made under authority of section 220, except as may be directed by the Commission or by a court or judge thereof, shall be guilty of a misdemeanor and will be fined not more than $500—

and so forth.

The practical effect of it has been that although the Interstate Commerce Commission agent in the field might have information on which the State authorities could assist the Federal authorities that agent in the field is prohibited from divulging it. Apparently he could if he wanted to, go back to the Commission and get special permission, but as a practical matter in everyday enforcement it is something that caused a good bit of trouble.

The CHAIRMAN. I suppose the problem with this would be with the industry and not with the Federal Government or State government. That is if there is any problem.

Mr. PINKNEY. Perhaps so.

The CHAIRMAN. You don't know any of the intricacies of disposing of this information, do you?

Mr. PINKNEY. No, sir. Our position is to facilitate in every way we can the enforcement of that act.

The CHAIRMAN. Section 6 has to do with penalties and you support that with a modification.

Mr. PINKNEY. Yes, sir. I support that part having to do with the illegal operations. We oppose that part having to do with safety rules.

The CHAIRMAN. Well, that part is this.

Mr. PINKNEY. Having to do with safety, I am sorry.

The CHAIRMAN. Well, you oppose the increasing of the amount here to $500 and $250 respectively and say reduce it to $200 and $100 respectively as I understand your statement.

Mr. PINKNEY. That is correct, yes.

The CHAIRMAN. With that modification you support this section?

Mr. PINKNEY. Yes, sir. We support that portion of the section having to do with illegal operation.

The CHAIRMAN. Now, the subpart in here has to do with safety?

Mr. PINKNEY. Yes.

The CHAIRMAN. Where is that? Do you have a copy of the bill?

Mr. PINKNEY. Yes.

The CHAIRMAN. Where is that?

Mr. PINKNEY. The reference is to section 204.

The CHAIRMAN. Well, the whole thing has to do with forfeiture and I believe that the penalty would be applicable to the three references in the section that it mentions.

Mr. PINKNEY. It does not seem to me to make sense to have this situation.

The CHAIRMAN. Now, section 7 has to do with reparation and so forth. And as I understod from your discussions, you were in court with this?

Mr. PINKNEY. I did not discuss this one at all, Mr. Chairman.

It deals with the Federal Aviation Act and reparation awards in that area and it is not a section on which we took a position. We do have, as you know, a position with respect to other measures pending which would impose outright reparations on the motor carrier industry and to that we have suggested certain revisions in connection with hearings on that matter.

The CHAIRMAN. Now, did you discuss section 8? That also has to do with the FAA?

Mr. PINKNEY. No, sir, I did not.

The CHAIRMAN. But you did make yourself pretty clear on section 9?

Mr. PINKNEY. Yes, sir.

I spoke on section 9. I did not speak to section 10, which is the guaranteed loans to railroads.

The CHAIRMAN. Now, I have had handed to you bill S. 2560, in the last Congress, which passed the Senate.

Mr. PINKNEY. Yes.

The CHAIRMAN. I believe you are entirely familiar with that bill?

Mr. PINKNEY. Yes, sir.

The CHAIRMAN. That bill has already been referred to by other witnesses here.

Now, section 1 in 2560 is applicable to what problem?

Mr. PINKNEY. That is applicable to the enforcement problem, Mr. Chairman. It is related to the problem you were just discussing of the Federal-State cooperation.

This particular section of the bill, bill S. 2560, would provide if any State requires regulated carriers to register their ICC certificates or permits, identify their bids, and so forth, the State shall conform its registration law to standards to be promulgated by the Interstate Commerce Commission.

A 5-year grace period is required to give any State which desires to require, or which now requires such registration, sufficient time to meet the standards.

The bill has two purposes: One, as testified by one of the witnesses the other day, some States, notably Arkansas and Florida, today require of all carriers operating in interstate commerce within their States, requires them to file with the State commission a copy of their interstate authority, and it is made a crime under the State law for a carrier to operate in the State without having so filed such a certificate or permit.

It amounts to a tremendous assist to the Federal Government to have State officers in there likewise policing the movement of interstate commerce within their boundaries.

If a man has not filed his interstate certificate with the State commission, which in most cases means he doesn't have one, then the State can punish him on the spot. There has been considerable doubt as to whether the States have the right to do this and some conferences in the American Trucking Associations oppose it on the ground it constitutes an unnecessary burden on interstate commerce.

But, the majority of our people feel that in the interests of better enforcement, there should be some action by the Federal Government which would recognize that this is a proper practice, but to avoid the great evil in this area, at the same time they would insist that such State statutes requiring these registrations be made uniform so that the carriers operating in many States will not have to deal with a myriad of different States laws in complying with this particular requirement.

The CHAIRMAN. That then is an enlargement or an expansion of section 5 in the proposed bill?

Mr. PINKNEY. In a sense, yes, sir. It has to do with enforcement.

The CHAIRMAN. Now, I have been informed that further discussions have been underway for some time with Mr. MacDonald of Georgia—who has been very active in the National Association of Public Utilities Commissioners—I think that is the name. Under his direction and leadership this matter has just about been resolved.

Do you know anything about that?

Mr. PINKNEY. Yes, sir.

I sat in on a meeting between Mr. MacDonald and Commissioner Murphy some weeks ago at which they discussed this matter and tentatively reached an agreement. I understand they are rapidly approaching a point where they can agree on the actual language. The purpose of that will be to remove a sharp objection on the part of the State commissions, as I understand it, raised last year. That is to permit the Federal Government to dictate and have the whole say in determining what would be the uniform standards. As I understand, they are trying to work out, and have practically worked out, a device whereby the establishment of standards would be by joint action of the National Association of Railroad Commissioners and Utility Commissioners and the Interstate Commerce Commission.

The CHAIRMAN. If such a formula is satisfactorily arrived at to meet the objectives that both the State and Federal Governments feel are necessary, do you think industry would generally go along with it?

Mr. PINKNEY. I do, sir.

As I have noted, we have some few of our groups that are opposed but the American Trucking Association; through its executive committee, has endorsed this principle and we back it.

The CHAIRMAN. You think it would be in the interest of the common carrier and the public service, and the public for such an arrangement to be included if it can be worked out?

Mr. PINKNEY. Yes, sir.

The CHAIRMAN. Now, section 2 of that bill, that is, of bill 2560; what does that have to deal with?

Here is what the report says:

Section 2 is basically a self-help provision by which injured private persons can bring an action for injunction in Federal court to restrain illegal motor carrier operations. This arises from a complaint that the Interstate Commerce

Commission has not been active enough in the field of enforcement. The carriers that are interested have a right to bring such action to protect themselves.

Mr. PINKNEY. That is right. It involves private suits against illegal carriers and our association endorses that particular section.

We think it would be helpful and would be an adjunct to the enforcement powers of the Interstate Commerce Commission. Safeguards have been written into it. That is to prevent harassment of carriers by other carriers and we believe it to be good legislation.

The CHAIRMAN. You think that is a provision that the committee should consider in connection with this legislation?

Mr. PINKNEY. Yes, sir.

The CHAIRMAN. Section 3—and this goes on through page 6—and section 3 would authorize the ICC to institute civil action in its own name against illegal operation. It also increases the forfeitures. What is your statement on that?

Mr. PINKNEY. Well, as we testified last year and as I testified again this year, sir, we believe that this increase in the power of the Commission to proceed against operations illegally conducted by either regulated or unregulated carriers is advisable. We were agreeable to the fines proposed in S. 2560, which were increased to $200, or set at $200 per offense with $100 for each additional day.

We agree with that. We think it would greatly strengthen the Commission's hand in dealing with the illegal operations problem. But, as I have already stated, on the question of extending it to the safety regulations, we were and are opposed to that.

The CHAIRMAN. As a matter of fact, it is almost identical with section 6 in the present bill that we have here, is it not?

Mr. PINKNEY. I believe it is.

The CHAIRMAN. That is with the modifications?

Mr. PINKNEY. Yes, except for the amount of the fine.

The CHAIRMAN. Yes, with the modifications you have mentioned.

Mr. PINKNEY. Yes, sir.

The CHAIRMAN. Now, section 4 is next.

The reason I am doing this is because it has been testified by the witness that these proposals in that bill were worked out very carefully with various groups in transportation and business such as shippers and the Commission and Senator Smathers and his group, and so forth, and there are several of the items in that bill that are included in the bill we have under consideration here.

I am trying to find out just the ones which at that time industry was all out for and urging that something be done immediately.

Mr. PINKNEY. Section 4, the registration of carriers operating under section 20(b)(6), which is the agricultural exemption, we strongly favor and I may say we do not have agreement on this one outside of industry that we have on some of the others.

I think the farm community was and is still sharply opposed to this.

The CHAIRMAN. Explain to us what it does so we have it in the record.

Mr. PINKNEY. That section. It is proposed those carriers, the for-hire carriers moving exempt commodities, would be required to register with the Commission annually, disclosing first the name of the carrier, his principal address, and third the number of vehicles owned

or operated. This registration would be limited to trucks of the three-axle size or larger.

The CHAIRMAN. Are you talking about section 4?

Mr. PINKNEY. Not of the bill that passed the Senate but section 4 as it originally appeared in S. 2560.

The CHAIRMAN. It appears to me that has to do with used household goods.

Mr. PINKNEY. It does. The section 4 I have just been talking about, the Senate did not approve. It was oposed by the agricultural community and it concerned the registration of the for-hire exempt carriers.

If I may, sir, I would like to go on and put in the record the nature of that bill and state it is a type of provision that we think would be helpful in getting at this problem.

The CHAIRMAN. You may do so, but I wish you would make it clear it is not section 4 of the bill as reported?

Mr. PINKNEY. That is correct, sir.

The CHAIRMAN. Would you just like to submit a statement on that? Is that what you had in mind?

Mr. PINKNEY. I could finish it in about a minute, what I started to say about that particular provision, which would require exempt agricultural commodity carriers to register with the Commission.

It would simply give the Commission information as to the size and shape of the movement of exempt commodities. It would include for example, those private carriers who were presently operating for hire in the exempt area and they, too, would be required to register.

It would be limited to the registration of vehicles of three axles or more so as to eliminate the small city type of truck of which there are thousands engaged in exempt-type operations.

The reason for our support of that is that one of the major problems in the enforcement area is lack of firm information and the registration of the 203(b)(6) operators would be a substantial aid to the gathering of such information by the Interstate Commerce Commission and other agencies concerned with insuring the healthy development of our national transportation system.

Now, at present, the Commission has no way of knowing with any degree of certainty who these carriers are or where they are located. The Commission is also greatly handicapped in informing these carriers of the safety regulations and in its attempts to obtain compliance with safety regulations.

We did support and would support such a provision so as to bring some knowledge at least into this presently rather obscure area of the movement of exempt unmanufactured agricultural commodities.

That was included in the original draft of 2560, but not in the draft as sent over by the Senate last year.

The CHAIRMAN. I am glad we have that information for the members of the committee.

Now, section 4 of the bill deals with 402 of the act, (b) and (g) of section 406, and that has to do with used household goods, does it not?

Mr. PINKNEY. Yes, sir, it does.

The CHAIRMAN. It has to do with freight forwarding?

Mr. PINKNEY. It has to do with forwarding of used household goods. It does not involve any of the other type of freight forwarder problems we have had. It is limited to a very special field.

The ATA Executive Committee endorsed the section that was in 2560 last year. It is my understanding that the household goods carriers have worked out during the past year a possibly revised version of that bill which meets with general agreement in that area and will have a witness appearing before you in connection with it at some later date.

I think they propose to ask to have a bill introduced dealing with that special subject.

I don't think it is related to the problem we have been discussing and with your permission, I would like to pass the testimony on that along to a household goods witness.

The CHAIRMAN. Very well.

I believe we had section 5 and that has to do with cooperative agreements with States to enforce the safety laws.

Mr. PINKNEY. Yes.

The CHAIRMAN. Which I believe we have already referred to?

Mr. PINKNEY. Yes.

The CHAIRMAN. Well, I just wanted to inquire for the record about these five sections that were included in that bill and as to just which of them are included in this bill 4701 or modified and included.

I think this does make it pretty clear as to just what these provisions are.

Any further questions?

Mr. YOUNGER. No.

The CHAIRMAN. Well, I am sorry to take so much time, but this is the only way to develop these things, to take them up section by section and get an explanation of them.

I am sure we have kept you much longer than you anticipated, but on behalf of the committee I want to thank you for your contribution here and willingness to discuss with us these problems. We recognize you are quite knowledgeable in this field. You may supply the information referred to for the record along with your statement.

Mr. PINKNEY. Thank you, sir.

The CHAIRMAN. Thank you very much and we will adjourn until 10 o'clock and we will have Harry A. Osterhart as the first witness.

(Whereupon, at 4:05 p.m. the committee adjourned, to reconvene at 10 a.m. Friday, May 3, 1963.)

TRANSPORTATION ACT—1963

FRIDAY, MAY 3, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

This morning the first witness will be Mr. Osterhart from Fremont, Mich.

Mr. Osterhart, will you further identify yourself for the record, and you may proceed with your statement.

STATEMENT OF HARRY A. OSTERHART, GENERAL TRAFFIC MANAGER, GERBER PRODUCTS CO., FREMONT, MICH., AND CHAIRMAN, CANNED GOODS SHIPPERS CONFERENCE

Mr. OSTERHART. Mr. Chairman and members of the committee, my name is Harry A. Osterhart. I am general traffic manager of Gerber Products Co., whose headquarters are at Fremont, Mich., and plants in Oakland, Calif., Rochester, N.Y., and Asheville, N.C., in addition to Fremont.

We also have a plant under construction in Fort Smith, Ark. I am concerned with transportation in all of its aspects and am responsible for the transportation policies of our company. I am also chairman of the Canned Goods Shippers Conference and appear here to testify for that group.

This conference is a national organization composed of men serving in a capacity similar to my own and who are in charge of transportation for 42 companies and State associations of canners which manufacture the major portion of the canned food products merchandised in this country. In total, our members are responsible for the expenditure for freight charges, an amount in excess of $500 million per year. We are, naturally, concerned with practices and policies relating to the transportation of raw materials as well as to the movement of finished products and, as far as this proceeding is concerned, the raw materials that we refer to particularly are fresh fruits and vegetables, milk, and other raw products.

Our conference deals with transportation policy, including equipment used in transportation and developments with reference to it, as well as methods and practices employed in the distribution of our products. We engage in necessary discussions with railroad men regarding these matters. Our members participate in conferences with

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reference to freight rates in accordance with agreement filed with and approved by the Interstate Commerce Commission. The efficient conduct of the affairs of our companies requires this orderly exchange of information regarding transportation and the charges paid for that transportation.

As specialists in our fields, we are interested in all phases of transportation, including the economic welfare of the transport companies upon which we rely. However, our interest in bulk commodities as contrasted with farm products is incidental. Our primary concern in the matters before this committee is with the transportion of agricultural commodities and my testimony is limited to that portion of the bill.

We are aware of the distinction in regulatory policy as to the movement of farm products by the different modes of transportation, under which the transportation of such products is subject to regulation when hauled by rail and are exempt when hauled by truck. We were deeply interested in the constructive message on transportation sent to Congress on April 5, 1962, by the President of the United States. One of the objectives of that message was to encourage Congress to adopt policies which would equalize the treatment accorded railroads with that accorded motor trucks.

The President offered as remedies for the situation as to exempt commodities either one of two alternatives: First, to remove from railroads the present regulatory control as to minimum rates; or, second, to leave the controls over the railroads as they are and make the transportation of farm products by truck subject to the same kind of control. It is the clear opinion of our conference that regulation should be reduced rather than increased. For this reason we favor, generally, the position taken in H.R. 4700 now pending before this committee.

We want nothing to happen in this proceeding which would put motor carriers of these commodities under the same kind of regulation now applicable to railway transportation, and we strongly favor action by Congress which would remove existing minimum rate controls from the railway transportation of agricultural commodities so that there would be more nearly equal competition as to prices. We believe the interests of the consumers, the carriers, business, and agriculture would be best served by the adoption of such a policy.

Actually, we favor action by Congress which would go further and bring about relatively complete equality as between the several modes of transportation. We firmly believe that the truck transportation of farm products should be left as it is and that the railroads should be given more freedom from control in the transportation of agricultural commodities. While the provisions of this bill would not give railroads full equality, we believe they are a step in the right direction.

There is, however, one aspect to this matter which is of some concern to us. We do not like the language of the bill, which pertains to the application of the antitrust laws. We originally supported legislation authorizing the conference method of ratemaking under which the administration of the antitrust principles was delegated exclusively to the Interstate Commerce Commission. We supported the Reed-Bulwinkle bill and have worked under it for the past 15 years.

We find that it is effective and practical and we are confident that it operates to the best interest of the shipping and consuming public.

The Interstate Commerce Commission and its staff have had long experience with the many and intricate problems involved in this general field of endeavor such as finance, accounting, cost finding, and many other matters. In this area, we think it would be impractical to expect that the courts and those who practice before them would have the same degree of familiarity and understanding as has the Interstate Commerce Commission.

We would be much happier if the bill before the committee could be amended so as to leave section 5(a) of the Interstate Commerce Act as it is and applicable in its full force. In fact, we would be against the proposal unless it is so amended.

We would like to see the bill changed so as to strike out all reference to section 5(a) and to merely take away the power of the Commission to fix minimum rates so that the railroads, like the motor carriers of exempt farm products, could reduce their rates without interference by the Commission. We do recognize the warning included in the President's message to the effect that rates on these commodities should not be permitted if they are predatory or monopolistic. Both the public and the carriers probably need protection against such rates.

It would probably be necessary for the bill to lay down some standards for the guidance of the Commission and the determination of what is predatory or monopolistic. Although our conference has made no pronouncement on this point, it is my personal opinion that a given rate on any of these commodities should not be held to be predatory or monopolistic as long as it adds something over and above the cost which would not have been incurred had the service not been rendered. The shippers want competition between the carriers and believe that vigorous competition is healthful.

It should be clearly understood that a rate which makes changes in the transportation pattern or which may take traffic from one carrier and place it in the hands of another, is not enough, when standing alone, to make it predatory or monopolistic. In fact, the Supreme Court in a recent unanimous decision said—

> something more than even hard competition must be shown before a particular rate can be deemed unfair or destructive.

We know that when we talk about real competition there is a possibility that someone might be hurt. The mere fact that a carrier might lose business or some shipper might lose a presumed advantage should not be enough to condemn a rate on these commodities as being so predatory or monopolistic as to require the application of the antitrust restraints.

We feel very strongly that the Interstate Commerce Commission should have the power to determine whether or not a given rate or system of rates is to be condemned. As I have said, we think the experience of the Commission in matters of this kind better qualifies it for making decisions in this field.

I also respectfully suggest that, in his message to Congress, the President did not recommend that the administration of the antitrust principles in transportation be taken out of the hands of the Interstate Commerce Commission and placed in the Department of Justice and

the several courts. He merely called for protection against predatory and monopolistic practices and did not imply that the Commission had been remiss in duties in this regard.

There is another part of this problem which should be considered. Under the present law, carriers of exempt agricultural commodities are not required to publish nor file their rate and the Commission has no power over them. We feel that railroads should have freedom as to rates on these commodities as nearly comparable to that enjoyed by their competitors as is practical.

It may be necessary to require that such railroad rates be published and filed with the Commission in order to maintain proper rate relationships. But in the establishment of such rates, the railroads should have the unrestrained right to put them into effect at once, as do their competitors, with power reserved in the Commission to condemn them only if they are found, under the safeguard spelled out in the law, to be predatory or monopolistic. However, such finding should be made only on a proper complaint and after full hearing and the burden of proof should be upon the complainant in any such proceeding.

In conclusion, I would like to point out the great need to expedite the relief proposed. We believe that carriers via all modes should have more flexibility in their rate structures and that it is imperative that relief be given the railroads as quickly as possible. It is clear that the railroad position in the transportation picture is declining rapidly. It is my opinion unless something is done soon, there will be no railroads left to worry about. Railroads have a great economic strength in their ability to haul great loads at low unit cost and they should be allowed to use it.

Congress should untie the hands of these vital railroads so they may use to the fullest the very economic strength they possess and can fend for themselves in their struggle for survival. They should be allowed to experiment with their pricing system and to move quickly in doing so. So let me urge this committee and the Congress to act promptly by adopting this bill, amended as I have suggested, so the railroads and others in transportation may help themselves.

We appreciate very much this opportunity to present our views to you.

Thank you.

The CHAIRMAN. Thank you, Mr. Osterhart, for your statement.

As I recall, you represent a substantial shipper; that is, your company, Gerber Products Co., and you are also speaking in behalf of the Canned Goods Shippers Conference?

Mr. OSTERHART. Yes, sir.

The CHAIRMAN. I observed that you explain the conference is a national organization composed of men serving in a capacity as yourself for your company in charge of transportation for 42 companies and State associations.

You are talking about trade associations in States?

Mr. OSTERHART. They are canners asociations. The four State associations who are members of our group are the Michigan Canners & Freezers Association, the New York Canners & Freezers Association,

Wisconsin Canners Association, and the Florida Growers & Shippers League, and through those associations they represent many of the smaller canners in those States.

The CHAIRMAN. You make a strong statement in support of maintaining the Reed-Bulwinkle provisions, section 5(a) of the present law.

Mr. OSTERHART. Yes, sir. We have lived under it since its enactment. We think it serves a very good purpose for the carriers and for the shippers.

The CHAIRMAN. There are those who have already testified here that if this should be done there would be no way of preventing certain practices which they feel any such mode would engage in if there were not some restrictions. What would be your response to that contention?

Mr. OSTERHART. We think that there is some danger of that and I believe, if that is the thing that the President had reference to when he referred to the predatory and monopolistic practices, that something could be spelled out in the law which would serve as some guideline to the Commission as to what would be predatory or monopolistic.

The CHAIRMAN. To the Commission?

Mr. OSTERHART. Yes.

The CHAIRMAN. In other words, you do not agree that the Department of Justice then should have any authority to handle this problem or deal with this problem under antitrust laws?

Mr. OSTERHART. No, sir. Our position would be if it is remanded to the Department of Justice and the courts and taken out of the hands of the Interstate Commerce Commission then we would be opposed to the bill.

The CHAIRMAN. In other words, you do not feel that the Department of Justice should have the responsibility of preventing discriminatory practices, predatory practices, and monopolistic practices?

Mr. OSTERHART. No, sir. We have the highest degree of respect for the Interstate Commerce Commission, which may serve in answer to a question Mr. Younger may ask. I don't know. However, I think that the shippers generally feel that the Commission has done an outstanding job of regulating transportation. We don't always agree with their decisions, naturally, but we think that their decisions have been fair. They have the records on which they can base the decision, and the carriers make reports to them, and we feel that their experience qualifies them to make such decisions.

The CHAIRMAN. You feel, then, that the railroads should be free from the minimum rate regulation of the Interstate Commerce Commission or the publishing of tariffs, but to give to the Interstate Commerce Commission the authority under certain circumstances and guidelines to prevent discriminatory, monopolistic, and predatory practices?

Mr. OSTERHART. Yes, sir.

The CHAIRMAN. That is your position?

Mr. OSTERHART. Yes, sir.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Osterhart, you are the first witness that we have had that might be called a patient in this controversy.

Will you give us some idea of the proportion of traffic as between the motor carriers and rails that you now represent?

Mr. OSTERHART. No, sir, I don't have those figures available. Our conference actually is a rather loose-knit organization. We keep no records and some of our members are a little jealous of their figures. Their competitors are members of the organization, and they don't like to release such figures to their competitors.

Mr. YOUNGER. What about your own case? Can you give us some idea of approximately your shipments as between rail and truck?

Mr. OSTERHART. Nationally, I would say about 50–50.

Mr. YOUNGER. About equally divided?

Mr. OSTERHART. Yes, sir.

Mr. YOUNGER. In connection with the principal agricultural products, which we are primarily interested in, what kind of a backhaul do the trucks get in connection with bringing to your plants the agricultural products?

Mr. OSTERHART. Most of the produce that we buy is on relatively short hauls and I would say that, on the majority of it, there is no backhaul at all. It is a deadhead to the pickup point or it is a deadhead back from the plant to the pickup point, but on the longer hauls we have, for example, a movement of apples from Michigan to our Asheville, N.C. plant—we have had for the last several years— and we utilize for that carriers of exempt commodities who may bring produce north, who may bring citrus up from Florida, and want a load back home or in the direction of home.

Mr. YOUNGER. Do you own any trucks of your own?

Mr. OSTERHART. No, sir.

Mr. YOUNGER. It is all for hire, the trucks that you use?

Mr. OSTERHART. Yes, sir.

Mr. YOUNGER. I notice that you evidently feel that there is some inequality in the existing situation as between the rails and the motor carriers?

Mr. OSTERHART. Yes, we do.

Mr. YOUNGER. To that extent, you differ with the testimony we have had of the motor carriers who contend there is no inequality.

Mr. OSTERHART. There is quite a difference in the method of regulation as between the trucks and the rails. As a matter of fact, there is no regulation whatsoever for the trucks and the motor carriers are not required to abide by any part of the Interstate Commerce Act except that as relates to safety.

They can publish rates if they wish, and I know of a few instances where rates have been published, but they don't mean anything.

The first time a carrier wants to change it, he changes it without regard to what has been published.

Mr. YOUNGER. Regardless of the H.R. 4700, the rails would still have to publish rates?

Mr. OSTERHART. Yes, sir, and the position of the National Industrial League on that I believe was that they would have to observe all of the section 5(a) agreement provisions; that is, with respect to putting the changes on the docket and public notice.

I would like to say that the members of the Canned Goods Shippers Conference are also members of the NIT League and we support the league in that position.

Mr. YOUNGER. If H.R. 4700 were enacted and the minimum rates were abolished, would that carry with it the right also of the rails to raise rates back and forth if they wanted to?

Mr. OSTERHART. Yes, they could raise rates, subject to Interstate Commerce Commission regulation. They would have to use the same procedure in raising them as they would in lowering them.

Mr. YOUNGER. If we abolish the control of the ICC over minimum rates and the rails set a lower rate, a rate that might be destructive or, as the truckers would say, for the purpose of putting them out of business, and then having put the motor carriers out of business, could they then raise the rate back without the consent of the ICC?

Mr. OSTERHART. Under the law as proposed, yes, I believe they could. I suppose that if the committee and Congress felt that some additional safeguards are needed they could put something in there similar to the provisions that apply as related to the water carriers.

However, I am a little doubtful that they could put the truckers out of business, and if they raised the rates it would be like trying to stop a wave. They would be right back in here.

Mr. YOUNGER. Would it be a good amendment in this bill if we provided that the rails could lower their rates under this permission to abolish minimum rates, but they could not raise rates without consent of the ICC, and in that case you would have pretty much of a stop on the rails fixing a rate which would be noncompensatory, knowing that if they fix it at that they cannot go back and raise it again? Would that have any effect?

Mr. OSTERHART. Yes, I think it would have some effect and possibly a good effect. I am speaking for myself now. I would personally see no objection to it. I can't speak for the conference on that.

Mr. YOUNGER. I do not imagine that you could answer this question, but I have been impressed with the testimony of the motor carriers when they contend that there is no need for change, that the rails can get into the trucking business and the motor carrier business without limitation.

There seems to be some difference of opinion on that, both from the ICC and from shippers and carriers.

I would like to ask the question whether maybe we are on the wrong track here, and what we ought to do is make it clear that rails are permitted to own all the truck companies they want to and operate truck companies without limitation and without restriction. That seems to be the advice of the truck companies. Is there any merit in that?

Mr. OSTERHART. I believe that the answer Mr. Pinkney gave you yesterday is substantially correct: that the exemption in the Interstate Commerce Act runs to the vehicle used in the transportation of the agricultural commodities, so that there is no restriction as to who might haul the exempt commodities, and under that kind of interpretation, yes, the railroads could. However, I believe that the position of the railroads is that they want to meet that competition in their regular railroad equipment, which they feel is the most economical or the more economical method of handling it.

I think probably that, under the present circumstances, trying to meet it with their motor carrier operation would be an uneconomical thing for them. However, I don't want to answer for them on that, but I believe that is their position.

Mr. YOUNGER. That is all, Mr. Chairman.

Thank you very much.

Mr. ROGERS of Texas (presiding). Mr. Hemphill?

Mr. HEMPHILL. Thank you, Mr. Chairman. I am sorry I missed part of your statement, Mr. Osterhart, but I read it entirely.

I believe you make baby foods. Is that not right, sir?

Mr. OSTERHART. Yes, sir.

Mr. HEMPHILL. If H.R. 4700 is passed by the Congress and signed into law by the President, would you expect to be able to cut your costs?

Mr. OSTERHART. I doubt very much that they could reduce rates enough to cut the price of the baby food.

Mr. HEMPHILL. I read from your statement, and I respect the fact that you have considerable experience and you are in a representative capacity here for the Canned Goods Shippers Conference. How many members of that conference are there?

Mr. OSTERHART. At the present time, we have 42 members. There are 38 industry members and 4 State associations of canners.

Mr. HEMPHILL. Since you have experience, I want to see if you agree with me as to what we have here.

We have for concern here the railroads, the regulated truckers, the unregulated truckers, the shippers who do business with the various modes of transportation, such as yourself, and the consuming public. Those are really the five groups that are concerned here; is that not correct?

Mr. OSTERHART. Yes, sir.

Mr. HEMPHILL. Would you agree with me that one of the troubles our transportation industry has today is the fact that we do have regulated and unregulated transportation? Is that not one main source of our trouble?

Mr. OSTERHART. It seems to be, yes. I wouldn't say it is the only source of our trouble, but it is one of them.

Mr. HEMPHILL. No, sir; I did not use the word "only" on purpose.

The trucking industry has come in here and presented its case and said that if this legislation is passed into law the effect will be to start a rate war which will result in putting the regulated trucker out of business.

Do you have some opinion on that?

Mr. OSTERHART. Yes, sir; I do. I don't think that it will put the regulated common carrier out of business at all. As a matter of fact, I think it will have very, very little effect on them. By far the greatest majority of the transportation of exempt commodities by truck is hauled by the unregulated carriers.

The regulated carriers do very little of that business. As a matter of fact, it has been our experience that they are not very much interested in it.

Mr. HEMPHILL. Of the five groups that I named, you represent a group we call the shippers or the users of the transportation, is that not correct, sir?

Mr. OSTERHART. Processors.

Mr. HEMPHILL. How would this legislation benefit your group?

Mr. OSTERHART. It would give us more flexibility in the transportation of the exempt commodities, particularly in the longer haul. I doubt that it would be of a great deal of benefit to us on the short haul.

Mr. HEMPHILL. In your opinion, would this benefit the consumers of the Nation?

Mr. OSTERHART. Yes, I believe it would.

You asked me if it would enable us to lower the price of the baby food. I doubt if there is any savings to be made in the freight charges as a result of this bill that would be great enough in the overall to have much influence on the price of the canned goods on the shelf, but I think that in movements to fresh markets it could have a much more direct effect.

Mr. HEMPHILL. The president of the Southern Railroad testified last year, as I recollect his testimony, that he estimated that the present regulation of railroads under the ICC in this particular area this bill treats with was costing the American public a billion dollars a year.

Would you give us some opinion on that?

Mr. OSTERHART. I doubt that I could make very much comment on that. About the only thing that I could say is that he was testifying with respect to the *Southern Grain* case and grain is a little bit out of my field. I am not sure what the rates are and what the problems are in connection with it.

Mr. HEMPHILL. Pursing your testimony a little further, I believe that you like the idea of H.R. 4700, but you are somewhat skeptical of the transfer of supervision of ratemaking to the Justice Department.

Mr. OSTERHART. We are not only skeptical of it; we don't like it at all. We think it would be very bad for the shipping industry and public.

I am not sure you were here when I answered that question by the chairman, but we feel very strongly that the power to regulate those rates should remain with the Interstate Commerce Commission rather than the courts.

Mr. ROGERS of Texas. Will the gentleman yield?

Mr. HEMPHILL. Certainly, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Osterhart, a minute ago did I understand you to say that, if this bill passed, or similar legislation, your cost would not be reduced to the extent that it would reduce the cost of the baby food to the consumer?

Mr. OSTERHART. I believe that is what I said. I think I said that the amount of freight rate reduction on these products would not be enough in our total cost to have enough of an influence to affect our selling price.

Mr. ROGERS of Texas. You mean by that, though, that you are assuming the premise that it would be cut and therefore your profits would be increased?

Mr. OSTERHART. Possibly, if they are cut very much.

Mr. ROGERS of Texas. As traffic manager, Mr. Osterhart, surely you have addressed yourself to this question.

Mr. OSTERHART. Yes.

Mr. ROGERS of Texas. I mean your interest in this bill is either in hopes of making more profit or getting better service.

Mr. OSTERHART. Our interest in this bill is twofold.

Mr. ROGERS of Texas. Yes, sir.

Mr. OSTERHART. In the first place, we want to keep the exemption on the agricultural commodities by motor carrier. That is our first aim.

The second is that if the exemption is to be retained on the motor carriers, we think that the railroads should be given equal treatment.

What the railroads will do with the bill, we don't know.

Mr. ROGERS of Texas. I mean, though, your interest in it is addressed to your own needs. Either you are going to make more money if this passes or you are going to be able to get better service, are you not?

Mr. OSTERHART. I think that, basically, it is a matter of getting better service, and if the railroads are able to effect some economies through this bill, we probably will benefit from it. If there is a saving, it will be one of the factors which will keep our price down.

Mr. ROGERS of Texas. Do not misunderstand me. I am not trying to indicate that there is anything wrong with it because I am realistic enough to know that you would not be coming up here to Washington to testify as a charitable proposition.

Mr. OSTERHART. Not very well.

Mr. ROGERS of Texas. Thank you.

Mr. HEMPHILL. Thank you. I yield back to the Chairman.

Mr. ROGERS of Texas. Mr. Broyhill?

Mr. BROYHILL. Mr. Chairman, I have a few questions.

You indicated to Mr. Younger, as I understand it, that 50 percent of your finished product was going out by rail and 50 percent by truck. Is that correct?

Mr. OSTERHART. That is roughly correct, give or take a little.

Mr. BROYHILL. Could you testify as to what percentage of your incoming exempt commodities are coming in by truck and by rail?

Mr. OSTERHART. Oh, probably 90 percent is coming by truck.

Mr. BROYHILL. By truck?

Mr. OSTERHART. Yes, sir.

Mr. BROYHILL. And what percentage of these incoming exempt commodities would be coming by unregulated truck, then?

Mr. OSTERHART. All of it.

Mr. BROYHILL. All of it?

Mr. OSTERHART. I will take that back. There is some of it comes in by regulated.

Did you ask me by truck, or rail?

Mr. BROYHILL. By regulated common carrier.

Mr. OSTERHART. Motor carrier?

Mr. BROYHILL. Yes, motor carrier.

Mr. OSTERHART. I would say all of it comes in by unregulated. Maybe I should qualify that just a little bit.

Occasionally we use a regulated carrier, but normally they are not very much interested in that business.

Mr. BROYHILL. Would you say that this would also be the case with the other members of your conference from your private conversations with them?

I know you testified that you do not have any figures and that they have not published any figures.

Mr. OSTERHART. I would say that that is generally true.

Mr. BROYHILL. In your testimony, in answering the questions of Mr. Rogers, you indicated that any freight reductions, any cost savings here, would not necessarily lower the cost of your finished product. Is this correct?

Mr. OSTERHART. That is basically correct. It would not immediately lower the cost of the product.

Mr. BROYHILL. Have you been experiencing rising costs in your business recently, having to pay the workers more and so forth? Have you had increased manufacturing costs?

Mr. OSTERHART. Over the last year we have been facing continually rising costs, not only in cost of the raw materials but labor and freight costs.

Mr. BROYHILL. How about the price of the raw materials which you have to purchase? Have these costs gone up in the last 5 to 10 years?

Mr. OSTERHART. Yes, they have.

Mr. BROYHILL. Have your profits been fairly stable, or have they been coming down, or what?

Mr. OSTERHART. We have no cause to complain. We have an efficient management.

Mr. BROYHILL. I am talking about whether your profits have been fairly stable.

Mr. OSTERHART. The Gerber Products' profits have been fairly good. We have been on a rising market.

Mr. BROYHILL. How about members of your conference? Do you have any figures?

Mr. OSTERHART. The canners generally are not in too good a position profitwise. Their percentage of profit to sales is very low. It is a highly competitive market. They are not able to raise their prices to match their increased cost, and their profit margins have been steadily dropping; that is, the general canners.

Mr. BROYHILL. Would you think it would be a fair statement to say that any cost reduction, if it could be achieved here, would tend not only to keep costs from going up but maybe having these cost savings passed on to the public in the future?

Mr. OSTERHART. Yes; I think it would be just one factor that would help the canners to maintain present prices.

Mr. BROYHILL. Even though there may not be any direct reduction, do you feel that any reduction of cost would certainly help the industry to maintain their present price structure?

Mr. OSTERHART. Yes, I feel that it would, and that it would also result in a benefit to the consumer.

Mr. BROYHILL. No other questions, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Brotzman?

Mr. BROTZMAN. Thank you, Mr. Chairman, I just want to go back to one point to be sure I understand it correctly, Mr. Osterhart.

If I understood your testimony correctly, you are for H.R. 4700, providing the sanctions and regulations relative to antitrust violations are maintained under the Interstate Commerce Commission. Is that a fair summary of your testimony?

Mr. OSTERHART. Yes, sir; it is. We think that some safeguards can be put in the bill which would serve as a guideline to the Interstate Commerce Commission in enforcing discriminatory rates which might tend to become predatory or monopolistic.

Mr. BROTZMAN. Referring to your testimony for a moment, you allude to the conference method of ratemaking. I am not familiar with that terminology. What does that mean?

Mr. OSTERHART. In section 5(a) of the Interstate Commerce Act, it authorizes the carriers to make rates by conference, by associations and bureaus, under agreements which are filed with the Interstate Commerce Commission and approved by them as a result of the Reed-Bulwinkle bill. I think it was passed in 1948.

Mr. BROTZMAN. The point I was going to ask you about was this: Is this the method that is employed now?

Mr. OSTERHART. Yes, sir. When I say we supported it, it was supported actively by the National Industrial Traffic League, and all of the canners who are members of our group are also members of the NIT League.

Mr. BROTZMAN. What you would like to have the Interstate Commerce Commission enforce would not really be antitrust laws, but something like them. Is that what you are talking about?

Mr. OSTERHART. Of course, I am not a lawyer, so I don't know just exactly what is involved in that, but when I allude to the antitrust principles, I mean that the Interstate Commerce Commission would enforce that particular phase of it, and I believe that the result of this has been that the antitrust laws are not applicable to the motor carriers because they are subject to regulation by the ICC.

Mr. BROTZMAN. We are talking in broad principles now. Had you consulted your counsel, let us say, about how feasible such a law would be? Have you talked with your lawyer about this? Have you sought professional advice in this?

Mr. OSTERHART. I have talked to our lawyer, but generally he gets his advice on transportation from me. He is not a transportation specialist.

Mr. BROTZMAN. I know; he gets his advice from you in these areas, but I am wondering if you do not follow him a little bit on legal matters. Do you do that?

Mr. OSTERHART. Very definitely. As a matter of fact, I had his permission to come here today and he looked over my statement and cut out a few points.

Mr. BROTZMAN. Then back to the question I asked you. You really have not consulted him and received advice as to how feasible or workable this type of legislation you are discussing or the amendment to this bill that you are discussing would be?

Mr. OSTERHART. No, but we have discussed it some in our conference and two or three of our traffic manager members of the conference are also attorneys and they felt that it would be practical.

Mr. BROTZMAN. It was their opinion that it would be practical?

Mr. OSTERHART. Yes.

Mr. BROTZMAN. Thank you.

I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Osterhart, I am sorry I did not hear all of the colloquy between you and the other members. I was called out for a long-distance phone call, but I would like for my own edification to ask you several questions.

One is that in the transportation of raw vegetables from the farm to your factory, in Asheville, N.C., or the one you are building in Fort Smith, Ark., would be exempt, of course?

Mr. OSTERHART. Yes, sir.

Mr. KORNEGAY. What about the transportation of your products after they are transformed into cooked and canned and bottled vegetables and transported from your plant to a point of distribution, a wholesale house or wherever they might go? Is that traffic exempt?

Mr. OSTERHART. No, sir. Finished products are regulated.

Mr. KORNEGAY. In other words, after the transformation takes place at your plants then they come under the ordinary rules and regulations of the ICC?

Mr. OSTERHART. That transportation for us is performed exclusively by regulated carriers.

Mr. KORNEGAY. By regulated carriers?

Mr. OSTERHART. Yes, sir.

Mr. KORNEGAY. I believe you told Mr. Younger that your company owned no trucks.

Mr. OSTERHART. That is right.

Mr. KORNEGAY. Has it any interest in any mode of transportation?

Mr. OSTERHART. None whatsoever.

Mr. KORNEGAY. You agree in principle with the admonition laid down in the transportation message that monopolistic and predatory practices should not be permitted. Is that correct, sir?

Mr. OSTERHART. That they should not be premitted. I said we do recognize the warning in the President's message.

Mr. KORNEGAY. Would you consider a noncompensatory rate as predatory?

Mr. OSTERHART. Well, it depends on what you call noncompensatory. There are different yardsticks for that.

Mr. KORNEGAY. When I use that term I mean one which is so low that the carrier is not making any money. He is losing money on it.

Mr. OSTERHART. I would say that if it costs the carrier $100 to transport a load and he gets $90 for it, it would be too low.

Mr. KORNEGAY. There has been some evidence here before the committee in the last few days that in a large area of the bulk and agricultural commodities a significant number of these commodities are moving by rail at less than out-of-pocket cost.

Mr. OSTERHART. I think they probably were referring to the bulk commodities and my testimony is exclusively to the agricultural commodities.

Mr. KORNEGAY. They used the term "agricultural commodities."

Mr. OSTERHART. I think they were referring to the bulk commodities, sand and gravel, and things like that, but I don't believe that there are any of the agricultural commodities—did that say railroads?

Mr. KORNEGAY. Yes. It said bulk and agricultural commodities.

Mr. OSTERHART. I doubt if the railroads are hauling agricultural commodities.

Mr. KORNEGAY. I quote, "Being moved by rails at less than out-of-pocket cost."

Mr. OSTERHART. I don't think that rails are hauling the agricultural commodities at less than out-of-pocket cost.

Mr. KORNEGAY. Then you disagree with that statement?

Mr. OSTERHART. I would, yes.

Mr. KORNEGAY. That sort of pulls the rug out from under me for my next question, but I will ask you, anyway, and that is, under your

theory, anything which is transported at less than out-of-pocket cost or hauled at less than cost would be predatory and, therefore, be prohibited, and would result in raising rates in a number of areas and on a number of commodities; would it not?

Mr. OSTERHART. I don't want to speak for bulk commodities at all.

Mr. KORNEGAY. I am speaking now of agricultural commodities.

Mr. OSTERHART. As far as agricultural commodities, I would say if the carrier is hauling them at less than his out-of-pocket cost they probably are too low and probably should be raised.

The CHAIRMAN. "Probably should" what?

Mr. OSTERHART. Be raised.

Mr. KORNEGAY. Mr. Chairman, I believe that is all I have.

Thank you very much, Mr. Osterhart.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Texas. Mr. Osterhart, I believe you said a minute ago that you did have shipments of apples from Michigan to your North Carolina plant.

Mr. OSTERHART. Yes, sir.

Mr. ROGERS of Texas. And you use truckers who are engaged in hauling agricultural products north and who want a backhaul or a partial backhaul. As the matter presently stands, there would be nothing to prevent very vigorous competition between the truckers themselves, would there?

Mr. OSTERHART. No, sir; there is nothing to prevent it.

Mr. ROGERS of Texas. Is it your experience that there have been predatory practices going on in the trucking industry in this regard?

Mr. OSTERHART. I know that there have been some very low rates. Whether you would call it predatory or not, I don't know.

Mr. ROGERS of Texas. That brings me to the next question.

In your company, do you usually trade with the fellow that gives you the lowest rate as the traffic manager, or do you sort of seek stability in the fellow you deal with?

Mr. OSTERHART. No; we, as a matter of fact, quite frankly pay a premium to a man who can give us dependable service. As a matter of fact, on the transportation of the apples that you referred to, we generally deal with a man who is headquartered in North Carolina and he arranges for the transportation and we pay him a premium to make sure that he gets the trucks there when we need them.

Mr. ROGERS of Texas. In other words, you are more interested in service than you are in low price?

Mr. OSTERHART. Yes, sir.

Mr. ROGERS of Texas. And if you can work the two together you would like to do it?

Mr. OSTERHART. Just to add to that; yes, sir, I think that is generally true of processors. We like to get the produce hauled at the lowest dollar. What we are interested in and what we must do is keep our plants operating.

Mr. ROGERS of Texas. Do I understand, then, that should this bill pass and the rails offered you a very low price but they could not deliver the goods to you at the time you needed them, then you would continue to use trucks at the higher price.

Mr. OSTERHART. Yes, we would, and we follow that policy on our regulated commodities. Many a haul the truckers get at a higher price

than the railroads charge because they can give better service and more dependable service. Price alone does not govern.

Mr. ROGERS of Texas. I am not trying to put in any plugs for your company, but I have had lots of experience with it. As a matter of fact, I kept you up for quite a while.

Mr. OSTERHART. We like the plugs, Mr. Rogers.

Mr. BROYHILL. Would the gentleman yield?

Mr. ROGERS of Texas. Yes, sir.

Mr. BROYHILL. I would like to say that Mr. Osterhart testified a few moments ago, in answer to a question by me, that the vast majority of these trucks who haul exempt commodities to him are unregulated trucks.

Mr. ROGERS of Texas. Yes.

Thank you, Mr. Chairman.

The CHAIRMAN. And want to still continue to be unregulated, I suppose.

Mr. BROYHILL. I would assume.

Mr. OSTERHART. Yes, sir.

The CHAIRMAN. From your experience, would you prefer they continue to be unregulated?

Mr. OSTERHART. Yes, sir. As a matter of fact, as I said, it was one of our aims in being here that we wanted to keep the agricultural commodities exempt for motor carrier transportation.

The CHAIRMAN. Are they part of the group that uses their equipment for unregulated commodities one way and then lease or arrange to let a common carrier have it to transport regulated commodities another way?

Mr. OSTERHART. To the best of my knowledge, none of the carriers that we use follows that practice.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Mr. Chairman, I just wanted to ask Mr. Osterhart if he has tried any of those good apples that are raised in western North Carolina? You were talking about hauling them down from Michigan.

Mr. OSTERHART. We are only hauling them from Michigan, Mr. Kornegay, as long as we are not able to get enough apples in North Carolina. We have quite a few orchards planted there.

Mr. KORNEGAY. That is quite all right.

Mr. OSTERHART. I would like to say that one of the things that influenced our location there was the fact that we could get those good apples in western North Carolina and, for the chairman's benefit, that influenced our location also in Fort Smith.

The CHAIRMAN. We welcome you in Fort Smith and if you want to use some North Carolina apples over there, it will be all right with me.

Thank you very much, Mr. Osterhart, for your appearance here and your testimony.

I apologize if we have kept you longer than you anticipated. I hope you are not delayed too much with your other appointment.

Mr. OSTERHART. Thank you.

I appreciate the opportunity of being here.

(The following letter and enclosures were subsequently received for the record:)

THE CANNED GOODS SHIPPERS CONFERENCE,
June 7, 1963.

Mr. OREN HARRIS,
Chairman, House Committee on Interstate and Foreign Commerce,
New House Office Building,
Washington, D.C.

DEAR MR. HARRIS: You will recall that I testified before your committee in support of H.R. 4700 on May 3, 1963. At the time, I supported the bill in principle, but urged the adoption of amendments which would leave section 5–A (Reed-Bulwinkle Act) applicable in its present form, would leave the administration of the principles of the antitrust laws to the Interstate Commerce Commission which now has that responsibility, and would afford protection to shippers and carriers against predatory or monopolistic rates, as requested by the President in his transportation message.

As of possible assistance to you, I enclose a draft of the bill as it would read if amendments to carry out the suggestions that I made in my testimony were adopted. I sincerely trust that you may be able to include this letter and the enclosed draft in the printed record of the hearings so that you and the committee may have an opportunity to study them.

Sincerely yours,

H. A. OSTERHART, *Chairman.*

PROSPOSED AMENDMENTS TO H.R. 4700, 88TH CONGRESS, 1ST SESSION

Page 1, line 3, strike out "(a)."

Page 3, line 6, strike out the period, insert a comma at the end of the line and add the following: "and shall have power, after hearing on complaint and after the complainant has sustained the burden of proving the allegations of such complaint, to condemn and declare unlawful any such rate, fare, or charge as predatory or monopolistic because it does not or would not produce revenue over and above that portion of the cost of rendering the service to which the rate applies which would not have been incurred if the service had not been rendered."

Page 3, strike out all after the period in line 9.

Page 4, strike out lines 1 to 11, both inclusive.

Page 5, line 1, strike out "(a)".

Page 6, line 16, strike out the period, insert a comma and after "advantage," add the following: "and shall have power, after hearing on complaint and after the complainant has sustained the burden of proving the allegations of such complaint, to condemn and declare unlawful any such rate, fare, or charge as predatory or monopolistic because it does not or would not produce revenue over and above that portion of the cost of rendering the service to which the rate applies which would not have been incurred if the service had not been rendered."

Page 6, strike out all after the period in line 19.

Page 7, strike out lines 1 to 22, both inclusive.

Page 8, line 17, strike out the period, insert a comma after the word "advantage" and add the following: "and shall have power, after hearing on complaint and after the complainant has sustained the burden of proving the allegations of such complaint, to condemn and declare unlawful any such rate, fare, or charge as predatory or monopolistic because it does not or would not produce revenue over and above that portion of the cost of rendering the service to which the rate applies which would not have been incurred if the service had not been rendered."

Page 8, strike out all after the period in line 20.

Page 9, strike out lines 1 to 13, both inclusive.

Page 10, strike out lines 9 to 14, both inclusive.

Page 10, line 15, change "(d)" to "(c)".

88TH CONGRESS
1st Session

H.R. 4700

(As it would read if Canned Goods Shippers Conference Amendment were adopted)

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1963

Mr. HARRIS introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To exempt certain carriers from minimum rate regulations in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Interstate Commerce Act, as amended (49 U.S.C. 1), is amended by adding thereto a new paragraph (23) to read as follows:

"(23) Notwithstanding any other provisions of this Act, in the case of rates, fares, or charges for the interstate transportation of (1) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count, or to the transportation of liquid commodities in bulk, (2) property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof): *Provided*, That the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' as used herein shall include property shown as 'Exempt' in the 'Commodity List' incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as 'Not exempt': *Provided further, however*, That notwithstanding the preceding proviso the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shellfish when frozen or fresh (but not including fish and shellfish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products) or (3) passengers, by carriers subject to parts I, II, III, or IV of this Act, the Commission shall have no authority or power to determine that such a rate, fare, or charge is lower than a reasonable minimum rate, fare, or charge. The Commission, however, shall retain all currently effective authority and power to determine that such a rate, fare, or charge is in violation of applicable provisions against unjust discrimination, or undue or unreasonable preference or advantage, and shall have power, after hearing on complaint and after the complainant has sustained the burden of proving the allegations of such complaint, to condemn and declare unlawful any such rate, fare, or charge as predatory or monopolistic because it does not or would not produce revenue over and above that portion of the cost of rendering the service to which the rate applies which would not have been incurred if the service had not been rendered. When used in this paragraph, the terms 'rates, fares, or charges' shall include all classifications, regulations, and practices relating thereto."

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SEC. 2. Section 303(b) of the Interstate Commerce Act is amended to read as follows:

"(b) Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. This subsection shall not apply to transportation subject, at the time this part takes effect, to the provisions of the Intercoastal Shipping Act, 1933, as amended."

SEC. 3. Section 418 of the Interstate Commerce Act is amended by striking out all following the final semicolon therein and inserting in lieu thereof "or common carriers engaged in transportation exempted under the provisions of section 1(23) or 303(b) of this Act."

SEC. 4. The Intercoastal Shipping Act, 1933 (46 U.S.C. 843), is amended by redesignating section 8 as section 9, and inserting immediately after section 7 the following new section:

"SEC. 8. Notwithstanding any other provisions of this Act, in the case of rates, fares, or charges for the transportation of (1) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count, or to the transportation of liquid commodities in bulk, (2) property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof): *Provided*, That the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' as used herein shall include property shown as 'Exempt' in the 'Commodity List' incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as 'Not exempt': *Provided further, however*, That notwithstanding the preceding proviso the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shellfish when frozen or fresh (but not including fish and shellfish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products), or (3) passengers, the Commission shall have no authority or power to determine that such a rate, fare, or charge is lower than a reasonable minimum rate, fare, or charge. The Commission, however, shall retain all currently effective authority and power to determine that such a rate, fare, or charge is in violation of applicable provisions against unjust discrimination or undue or unreasonable preference or advantage, and shall have power, after hearing on complaint and after the complainant has sustained the burden of proving the allegations of such complaint, to condemn and declare unlawful any such rate, fare, or charge as predatory or monopolistic because it does not or would not produce revenue over and above that portion of the cost of rendering the service to which the rate applies which would not have been incurred if the service had not been rendered. When used in this paragraph, the terms 'rates, fares, or charges' shall include all classifications, regulations and practices relating thereto."

SEC. 5. (a) Subsection (d) of section 1002 of the Federal Aviation Act of 1958 (49 U.S.C. 1482) is amended by inserting the designation "(1)" after "*Provided*," replacing the period at the end of said subsection with a comma, and adding the following:

"(2) That as to rates and charges for transportation of (i) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count, or of liquid commodities in bulk, and (ii) property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof) the Board shall have no authority or power to determine that such a rate or charge is lower than a reasonable minimum rate or charge. The Board, however, shall retain all currently effective authority and power to determine that such a rate or charge is in violation of applicable provisions against unjust discrimination, or undue or unreasonable preference or advantage, and shall have power, after hearing on complaint and after the complainant has sustained the burden of

proving the allegations of such complaint, to condemn and declare unlawful any such rate, fare, or charge as predatory or monopolistic because it does not or would not produce revenue over and above that portion of the cost of rendering the service to which the rate applies which would not have been incurred if the service had not been rendered. When used in this paragraph, the term 'rates or charges' shall include all classifications, regulations, rules, and practices relating thereto."

(b) Section 1002 of the Federal Aviation Act of 1958 is further amended by adding at the end thereof the following new subsection:

"DEFINITIONS

"(j) For the purposes of subsection (d)(2) of this section, the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' shall include property shown as 'Exempt' in the 'Commodity List' incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as 'Not exempt': *Provided*, That these words shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shellfish when frozen or fresh (but not including fish and shellfish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products)."

(c) It is the intent of Congress that regulatory control over minimum passenger fares of the air carriers be reduced to the greatest extent consistent with the public interest, so that business incentives and competition may play a more influential role in the pricing of air transportation.

The CHAIRMAN. Mr. William J. Augello, Jr., traffic counsel for the National Fisheries Institute.

You may proceed, Mr. Augello.

STATEMENT OF WILLIAM J. AUGELLO, JR., TRAFFIC COUNSEL, NATIONAL FISHERIES INSTITUTE, INC., WASHINGTON, D.C.

Mr. AUGELLO. Thank you, Mr. Chairman and members of the committee. I am testifying as traffic counsel for the National Fisheries Institute, Inc., of Washington, D.C. NFI is a national trade association representing the great majority of firms in the commercial fisheries industry throughout the United States, including many local fishery organizations. Its members are boatowners, processors, packers, distributors, brokers, and wholesalers of edible fresh, frozen, and preserved fish and shellfish products and industrial byproducts.

Mr. Chairman, I am submitting this prepared statement and, if the committee wishes, I would like to summarize rather than read it.

The CHAIRMAN. Your statement will be included in the record then, Mr. Augello, and you may proceed to summarize it.

(The statement referred to follows:)

STATEMENT OF WILLIAM J. AUGELLO, JR., TRAFFIC COUNSEL, NATIONAL FISHERIES INSTITUTE, INC.

Mr. Chairman, my name is William J. Augello, Jr., traffic counsel for the National Fisheries Institute, Inc.

NFI is a national trade association representing the great majority of firms in the commercial fisheries industry throughout the United States, including many local fishery organizations. Its members are boatowners, processors, packers, distributors, brokers, and wholesalers of edible fresh, frozen, and preserved fish and shellfish products and industrial byproducts.

NFI has joined with other farm and food organizations in the position that less regulation of railroads and not more regulation of motor and water carriers in presently exempt areas will promote a stronger national transportation system.

Rail transportation presently is not an important factor in the distribution of fresh or frozen fishery products. A recent survey conducted by the Department of Interior (Circular 133) revealed that in 1958, only 2.6 percent of this traffic moved in rail service, and only 3.5 percent moved in express service. The balance of 93.9 percent was transported in motor vehicles by so-called exempt, regulated and private carriers. Only 13 percent of the total truck traffic was moved at rates subject to Interstate Commerce Commission regulation.

Recently, however, the railroads have displayed a sincere desire to compete for certain types of this traffic and have experienced no difficulty in reducing rates below existing truck competition. Our industry strongly favors this approach to equalizing competition if safeguards against discriminatory and preferential rates are retained.

We recognize that the removal of control over minimum rail rates could jeopardize the ability of certain motor carriers to continue rendering vital services to our industry. We urge, therefore, that this legislation, if enacted, be subjected to careful and continuous scrutiny by Congress.

ALTERNATIVE PROPOSALS

The fishery industry is more vitally concerned with alternative proposals to repeal or modify existing exemptions a position in which the rail and regulated motor carrier interests appear to be in accord. Needless to say, the Interstate Commerce Commission favors this approach, as is reflected in its 76th Annual Report, Legislative Recommendation No. 7, which was introduced in this session of Congress as H.R. 5201.

The fishery industry hereby reiterates its vigorous opposition to any modification of the fishery exemption which would destroy the flexible, economic, and expeditious distribution facilities so necessary to its continued growth and welfare. Our reliance on exempt motor transportation is attributable to the special characteristics of this traffic and the service requirements of the industry.

As we informed Congress in 1958, we have highly perishable products which are sold in relatively small quantities. The per capita consumption of seafoods is still only 10½ pounds as compared with 86.7 pounds for beef, 314 pounds for milk and cream, and 95.4 pounds for fresh fruit, for instance.

As a result, fishery traffic requires multiple deliveries of small quantities at widely scattered points, a service which can best be performed by motor carriers having a maximum degree of flexibility, speed of operation, and freedom from costly administrative burdens which add substantially to the cost of distribution.

Our existing rate levels are vital to our continued participation in a share of the protein food market. Fishery products must compete with meat, poultry, and dairy products which move primarily in truckload quantities at truckload rates. On the other hand, our products move principally in less-than-truckload quantities in multiple-delivery service.

Present rates on this traffic could not remain at these levels under ICC regulation due to restrictive tariff rules and regulations imposing limitations on pickup, delivery, and stopoff services, territorial operations, out-of-route operations for multiple deliveries, minimum weights, and other technical regulations which hamper the free flow of perishable commodities. It is clear that an increase in the cost of distributing fishery products under ICC regulation will be reflected in our rates, thus increasing our competitive difficulties.

We are equally convinced that the special service needs of our industry could not be preserved under a "grandfather" provision such as that provided in H.R. 5201 in connection with the proposed limitation of exemptions to vehicles having not more than three axles. The basis for this conclusion is the difficulties experienced by the carriers and shippers affected by the Transportation Act of 1958 in preserving the flexible services and economical rates available prior to regulation.

In 1960, a preliminary survey conducted by the U.S. Department of Agriculture at the request of Gen. John P. Doyle revealed that following the Transportation Act of 1958, many processors of frozen fruits, berries, and vegetables, in the East, Middle West, and South found it more difficult to obtain service, particularly to new markets and for less-than-truckload shipments. Furthermore, these processors reported a significant increase in rates and charges on this traffic, particularly for stopoff shipments. (Market Research Rept. No. 316.)

These rates are currently being investigated by the Interstate Commerce Commission at the request of the railroads, and will probably be subjected to a minimum rate order which will further increase the cost of distributing these products.

Any similar change in truck rates on fishery products would seriously hamper the fishery industry's struggle to increase the consumption of seafoods and to strengthen its position in the highly competitive food market.

Similarly, any change in our carriers' freedom to shift their operations according to our constantly changing needs as has happened in the frozen fruit and vegetable industry, would cause a disruption of essential services. Nor could our industry continue to expand under a system of regulation which draws artificial, hairsplitting distinctions between commodities for the purpose of limiting motor carriers' services to some varieties of products, and not all products in the same class.

In view of the substantial similarities in the production and transportation of fresh and frozen fruits and vegetables compared with fresh and frozen seafoods, it should not be difficult to appreciate the fishery industry's position respecting its existing exemption from ICC control. Fishermen are, in essence, farmers of the sea. The production of seafoods is just as susceptible to weather, crop, and market conditions as are farm products. The precise origin and destination point of a seafood shipment is just as unpredictable and variable as fruit and vegetable shipments. Both types of traffic when moving in a frozen form originate and terminate at cold-storage facilities, the selection of which is wholly dependent upon the availability of freezer space.

The motor carriers handling these products, therefore, must possess complete freedom to shift their points of service along with the varying demands of the traffic. Flexibility of operation is even more vital when these perishable commodities move in a fresh form, or move in less-than-truckload quantities requiring multiple deliveries at changing points within a broad territory. This type of service has not generally been available from carriers operating under regulations imposing strict limits on the points they may serve and the commodities they may transport.

In sum, the special service and cost problems entailed in the production and marketing of fresh and frozen seafoods compels our industry to vigorously protest against any change in existing transportation policy which will narrow the advantages of exempt transportation or result in higher distribution costs.

Mr. AUGELLO. Basically, our position here on H.R. 4700 is that we are in favor of less regulation of railroads and not more regulation of motor and water carriers in presently exempt areas.

The reason we have adopted this position is that we are violently opposed to any amendment of the present fishery exemption, as has been suggested as an alternative by not only the Interstate Commerce Commission but the trucking interests as well.

We feel that rail transportation today is not a significant factor in the movement of fishery traffic.

This conclusion has been based upon a recent study prepared by the Bureau of Commercial Fisheries, Department of the Interior, during 1960 which revealed that only 2.6 percent of our products were moved by the railroads and only 3.5 percent were moved in railway express service. The balance of almost 94 percent moved in truck service, which included exempt carriers, regulated carriers, and private carriers.

Actually, we do not feel that there is any need for removal of minimum rate control for rail rates to enable the railroads to get back into the fishery traffic. They have experienced no difficulty in reducing thier rates on fishery traffic, as they perhaps have had in connection with certain agricultural commodities.

As far as we can see, they can reduce their rates today without any organized opposition from any of the exempt carriers that are

presently participating in this traffic. They certainly will receive no opposition from the fishery shippers.

However, we do see a possibility that removal of minimum-rate control could adversely affect fishery traffic.

What could happen is that this privilege would be exercised and directed toward specific long-haul carriers engaged in hauling fishery traffic.

What would naturally follow would be that these carriers who are also performing a very vital service in connection with short-haul traffic and multiple-stop traffic, which is not attractive to the railroads, would be unable to continue performing those vital services.

We, therefore, urge the committee if this legislation is adopted to watch the situation very carefully to prevent any unreasonable use of this power by the railroads.

We are move vitally concerned, however, with the alternative, and that is repeal or any modification of existing exemptions.

In order to appreciate our position, it is necessary to understand the special characteristics of the fishery industry. We have one of the most highly perishable products produced and consumed, as has recently been demonstrated. Therefore, we need the maximum degree of speed in delivery and distribution of our commodities.

There is a saying in our industry to the effect that fish, unlike wine, does not improve with age; and that certainly is true with respect to the transportation of our products.

We need a maximum degree of flexibility because our production is so geared to weather conditions, unpredictable weather conditions. Unlike farmers, we can't watch our crops growing; we have to depend upon the daily catch and, as Congressmen from the coastal States well know, there are a number of catastrophes that could and often do happen which completely wipe out segments of our industry.

The invasion of starfish, and oyster drills, and hurricanes which completely wipe out an oyster industry for years are some of the things that we must cope with.

Furthermore, the per capita consumption of fishery products is only 10½ pounds per year. It has been 10½ pounds or in that area for the last 30 years.

Fresh and frozen fishery products are roughly about 6 pounds, and it is only the fresh and frozen varieties that are exempt from Interstate Commerce Commission control.

The significance of this fact is that we must compete with other high-protein foods which are consumed and shipped in much greater quantities. For instance, the per capita consumption of meat was 161 pounds in 1961. Poultry was 38 pounds. Combined, that is almost 200 pounds a person. Let me illustrate how this affects our transportation characteristics. For every truckload of meat weighing 30,000 pounds, the fishery industry is able to ship 900 pounds.

A similar illustration can be seen in observing the fact that the frozen fruit and vegetable industry last year produced 2.8 billion pounds of frozen fruits and vegetables and the frozen seafood volume was only three-quarters of a billion, so that, for every 28,000-pound load of combined frozen fruits and vegetables, we were only able to ship a less-than-truckload quantity of 7,500 pounds.

What we are trying to do is to ship in small quantities in competition with other food industries that ship basically in truckload quantities. We are able to do this only under the exemption because through the exemption we are able to consolidate freely; we are able to get truckload rates for less than truckload quantities; we are able to get the flexibility which is required to perform these multiple stopoffs through a wide territory; and we are able to get the economical cost that the exemption has permitted.

The changing points of origin and destination constitute one of the greatest difficulties that truck operators have in serving our industry; that is, it would be a fatal disability if the trucks were tied down with regulations which would limit them to the points that they are able to serve and, more specifically, the commodities that they were able to haul. This is a disability which the railroads are not under today, and if this committee is seriously concerned with removing competitive disabilities and equalizing competition, this is one area in which the committee could correct a disability that specialized carriers operate under in competition with railroads.

To illustrate: a railroad can pick up any commodity at all and transport it between any two points.

The CHAIRMAN. I do not believe I understood that. What is the disability?

Mr. AUGELLO. The disability is in commodity limitations that the truckers operate under today under regulation.

The CHAIRMAN. What is the commodity limitation?

Mr. AUGELLO. The fact that specialized carriers are limited to a commodity description in their certificate. I will give you an example. Several years ago, one of the regulated motor carriers applied for an application to transport some frozen foods out of a new plant in Georgia or Alabama. The commodity happened to consist of a variety of cornmeal products that were fried and then frozen. The commodity description that was granted by a Division of the Commission was "frozen hush puppies." That is all that that carrier could haul out of that plant, frozen hush puppies, and it was several months and almost a year later, after constant petitioning on the part of that carrier, that the entire Commission ultimately broadened the authority to "frozen foods."

Under present regulations, the Rules of Practice having been amended since that time, it is no longer possible for a carrier to appeal one of these decisions up to the entire Commission. There are very limited conditions under which he can do that. This is just one lllustration. It is prevalent throughout the regulations.

The CHAIRMAN. Did he make an application for transporting hush puppies?

Mr. AUGELLO. No; he applied for frozen foods.

Mr. KEITH. Initially?

Mr. AUGELLO. Initially, yes, and the testimony was that:

> We are producing today frozen hush puppies and we are experimenting with other frozen-food products and we eventually in time anticipate having a wide variety of these products.

It is this type of hairsplitting and limitation which the specialized motor carriers today must operate under in competition with railroads who are completely free to haul any commodities they wish.

I would like to give you another illustration of this type of restrictive interpretation and administration that has resulted from the Transportation Act of 1958.

Did you gentlemen realize when you passed the Transportation Act of 1958 and regulated frozen fruits and vegetables with grandfather rights that you said to the motor carriers, "You can transport frozen squash, but you cannot transport frozen winter squash?"

Did you realize that you said to these carriers that "You can transport frozen stringbeans if they are blanched for 3 minutes, frozen and put in a package, but you cannot transport them if they are blanched for 7 minutes and placed in a boilable pouch?

This is the result of the Commission's interpretation of this law. This controversy has arisen over the description of "frozen vegetables."

Mr. ROGERS of Texas. Would the gentleman yield, there, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. ROGERS of Texas. On that subject, Mr. Augello, you said when we passed the 1958 Transportation Act did we know that we did a certain thing. We did not do that. The Commission did that, did they not?

Mr. AUGELLO. That is correct, sir.

Mr. ROGERS of Texas. I want to get this blame where it belongs.

The CHAIRMAN. I do not know that I would agree that that is the case, because, from what I know about it, I think the Congress was primarily responsible for it deliberately and intentionally, and I do not disclaim any responsibility at all for it. I want that to be made perfectly clear.

I do realize, as it is with a lot of these highly competitive things, that compromise was of necessity.

You are somewhat facetiously bringing to this committee and in this record the problem which you probably are justified in criticizing, but are you, Mr. Augello, saying to us for this record that, No. 1, any common carrier should be permitted and have authority to transport any product that it desires?

Mr. AUGELLO. By no means, Mr. Harris.

The CHAIRMAN. I am glad that is straight.

No. 2, are you saying that when a carrier becomes a common carrier it should have the authority to transport any product that is included in its license regardless of the status of that product, whether it has become processed and then is in a different status from what it was than when it was exempted?

There is the real crux of this whole thing.

Mr. AUGELLO. What I am saying is that if grandfather rights were intended to be granted for frozen vegetables, and the industry prior to that regulation considered all frozen vegetables to be in the same category——

The CHAIRMAN. Do you not know as well as I do that there has been a demarcation somewhere as to what is a frozen food?

Mr. AUGELLO. What is a frozen vegetable, yes.

The CHAIRMAN. Yes. You can set it wherever you want to, and the Congress endeavored to direct the Commission to do this in an effort to prevent this continuous erosion that was going on in the common

carrier industry, and that is one of the major things that we are going to try to get at here, and I hope we can make some progress.

We can criticize the Commission, and a lot of times I think it is justified, too, like Mr. Rogers, but, on the other hand, if we are going to contend when we get into a position like this that we should not have some positive and direct policy for the Commission to follow, we are still going to endanger our common carrier system.

It may be that frozen beans become frozen beans in the summertime and unfrozen in the wintertime. I do not know. I am not going to quarrel about that.

However, I do know that there is a point somewhere that somebody is going to have to determine when it becomes a product that should be exempt or when it becomes a product that should not be exempt, and I think you could help us by directing your thoughts to that highly complicated problem for us.

Mr. AUGELLO. Mr. Harris, we thought that that problem had been solved by the adoption of the Transportation Act of 1958.

The CHAIRMAN. Apparently it has not from what you just said.

Mr. AUGELLO. That is correct. In view of the testimony that was given before this committee and the Senate committee that the frozen vegetable industry was shipping out these varieties of vegetables in the same truck and wanted to continue that, and the chairman himself said on the floor of the House that it was the intention of Congress not to hamper or hinder the industry in any way, we thought, as well as the frozen fruit and vegetable industry, that what we were getting was a preservation of existing facilities, a preservation of the right to continue transporting these same commodities. Well, unfortunately, that is not what happened.

If you will take a look at the hundreds of grandfather applications that have been disposed of since that time, and incidentally many of them are involved in Federal court appeals right at this moment, you will see that the carriers and the shippers that relied upon their services did not get that preservation and flexibility. You will see that the Commission has tied down these flexible operations to only limited points, specific points, that were served continuously during this period.

You will see that the Commission has also splintered the commodities that these carriers can transport.

They have given rights for frozen fruits between some points, frozen vegetables between other points, and frozen berries between still other points, even though those carriers transported all three commodities throughout their territory.

Mr. ROGERS of Texas. Would the gentleman yield at that point?

The CHAIRMAN. Yes.

Mr. ROGERS of Texas. Mr. Augello, what did you have reference to a moment ago when you said as the law presently stands these people have also lost their right of appeal to the full Commission?

Mr. AUGELLO. I am referring to the amendment to the General Rules of Practice of the Commission whereupon a decision of a division cannot be appealed to the entire Commission unless it meets with very limited qualifications.

One is that the matter in issue must be declared by the Commission to be a matter of general transportation importance.

If there is any change in the examiner's proposed report by the division, you can file a petition for reconsideration, but it will be disposed of by the same division in an appellate capacity.

In essence, what we are saying here is that the fishery industry does not wish to be burdened by the regulations which are currently in existence, particularly in view of the constantly changing traffic that we have, and we are relying very largely, although not entirely, upon the results of the 1958 grandfather legislation.

Incidentally, the U.S. Department of Agriculture in, I believe, 1961 issued a supplemental report to their study of the exempt transportation of frozen fruits and vegetables. The period studied was shortly after the grandfather legislation had been passed, but in that short period they reported that packers of these commodities had experienced increased rates. They had experienced difficulty in moving less-than-truckload frozen shipments.

That is our primary concern.

We know the difficulties we have under existing exemptions and we greatly fear the difficulties that we will have under regulation.

One of the important reasons for the exemption, as far as our traffic is concerned, is the economical rates that we are able to obtain.

Do you know that in 1962, the average price of fish at the wharves was only 7¼ cents per pound? This was only a quarter of a cent higher than the average price in 1946. Oh, but in 1951, we had a great year; the average price was 8¼ cents.

What effect does this have upon our transportation problems? It is this: Unless we get the most economical transportation possible we are not going to be able to move our seafood products into the inland markets. They are going to be consumed principally in the coastal areas.

A perfect example of that is what happened as a result of spiraling railway express increases that we experienced right after the war. Year by year our volume of fresh fish which moved primarily in railway express service dwindled. Our shippers experienced great difficulty in being able to serve the small markets farther inland. They had a tremendous business going as a result of real good express service to these points. An entire segment of our industry was wiped out as a result of the increased rates and minimum charges.

I am speaking specifically of the home order fishery business, people who would have fishfries over the weekend and order a barrel of fish or a barrel of clams and oysters, or crabs.

This is what happens when our transportation costs get out of control.

We are convinced that you cannot regulate the rates on fishery traffic without increasing distribution costs.

We also fear that regulation of rates would ultimately result in complete regulation. We can't conceive how you can regulate one portion of this transportation without the other.

An example of that is in this Bureau of Commercial Fisheries study that I referred to previously. They reported that exempt carriers needed only 1 administrative employee for every 10 drivers that they employed. On the other hand, the regulated carriers covered in this survey needed one administrative employee for every three drivers. Regulation has got to result in increased rates.

We are also very much afraid that what has happened to the frozen fruit and vegetable rates following the 1958 act will also happen to our rates. We need only look at the rate investigation that is presently being conducted by the Interstate Commerce Commission on these formerly exempted commodities, that is, in docket 32912. The railroads have asked for an investigation into these rates because they find chaos.

It appears that the railroads and major motor carrier rate bureaus are aiming for a minimum rate order which would fix these frozen fruit and vegetable rates and banana rates on a static, higher level.

The most disappointing part of this investigation is that all of the evidence that has been put in by the Interstate Commerce Commission cost study thus far is not based upon the cost of transporting this specific traffic by the carriers that are handling the traffic. They are relying upon general cost studies of general commodity carriers, most of which derive all of their revenue, or most of their revenue, from handling less than truckload shipments. We don't think it is fair. We don't think it is reasonable to fix perishable rates at a level necessary to move general commodities.

Lastly, I would like to observe that to my knowledge there has been no compelling argument given thus far that the regulation of exempt rates will benefit the railroads.

We can't see how this is going to increase their traffic. They are operating under inherent disabilities insofar as handling our flexible shipments are concerned. They cannot perform the multiple deliveries that we so greatly need, and a perfect example of that is in their recent publication of piggyback rates on frozen shrimp out of Texas to the East. The rates are fine. They are lower than exempt rates. But they have so many restrictions in them that they can't move a substantial amount of traffic.

For instance, if they pick up a shipment at two different points of origin, they won't perform any split deliveries at destination, and then if they do perform any split deliveries on this traffic they can only stop this rail car and take off a piggyback trailer at a point where they have facilities and when they do that it takes this car out of the fast train it was moving on and that car has to wait for the next train, and so forth, and so on, until it ultimately gets to destination.

We just can't imagine how this legislation could be of great benefit to the railroad industry because of the peculiar nature of our traffic.

We, therefore, urge that if any change in regulation at all has to be made, well, let's try the removal of minimum rate controls. We don't think it is going to help as far as our traffic is concerned. It might help in other areas. But please don't tamper with the fishery exemption.

The CHAIRMAN. Any further questions?

Mr. ROGERS of Texas. Mr. Chairman, I would just like to make this observation.

I think your fish folks would probably be helped better if we just put another Friday in every week.

Mr. AUGELLO. We certainly concur. If there is anything that the good Congressman can do in that connection we would like to help.

Mr. ROGERS of Texas. I have no further questions.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

In regard to the movement of the fish products, especially the frozen fish and some of the fresh fish, do you use refrigerated trucks in most of the cases?

Mr. AUGELLO. Wholly.

Mr. YOUNGER. So that it is not like going out and buying a second-hand truck and hauling vegetables.

The truck is quite an expensive piece of equipment.

Mr. AUGELLO. That is correct.

Mr. YOUNGER. So that you have to have much better and much stronger equipment in your motor carriers, even though they are exempt, than you would transporting vegetables or under the exemption for agricultural products?

Mr. AUGELLO. That has been our experience except insofar as the movement of fresh seafood products where they can use bunker blower equipment under ice, but principally the movement of frozen commodities demands the best equipment possible, and our industry has upgraded their equipment standards along with other frozen food-packers because maintenance of quality is becoming so much more important in this food industry.

Mr. YOUNGER. Is there not another peculiarity about your business; that the hauls are long hauls primarily?

Mr. AUGELLO. There are long hauls in our business, yes. I don't know whether or not they are primarily long or short. I would say that I know personally of transcontinental movements of shrimp and fish. It is a strange thing in this industry, you can get a movement of fish coming from Massachusetts to California and the truck will load right up with California fish and go right back to Massachusetts.

Mr. YOUNGER. We have a different kind of fish.

Mr. AUGELLO. That is correct. I am not prepared to say which is the better.

Mr. KEITH. I am.

Mr. YOUNGER. For instance, also, I think in your industry you can get what might be called the backhaul. Could you explain that?

For instance, as you were mentioning here, the movement of fish from the Pacific coast, say, to the gulf or from the gulf to some other point. Those are long hauls.

Mr. AUGELLO. We have found that fishery products constitute one of the most available sources of backhaul traffic for frozen food carriers.

For instance, the carriers that haul meat products are very large haulers of exempt fish. Frozen vegetable carriers are also in the same category.

I think, basically, the reason is that most of the meat products and frozen vegetable movement originates in the farm territories and moves out to the heavily populated coastal areas, and that is where the fish are caught and moved inland, so it forms a perfect balance for this refrigerated equipment.

Mr. YOUNGER. Have you had any difficulty with regulations as to the movement of the frozen fish from one district to another?

Mr. AUGELLO. Fortunately, Congress granted an exemption from the 30-day leasing restriction so that these exempt carriers are per-

mitted to trip lease to regulated carriers and therefore there is and has been a free flow of equipment.

Mr. YOUNGER. You mentioned some difficulties you have had with the ICC interpretations.

Mr. AUGELLO. Yes, sir. There have been some areas in which the seafood products can only move out of the origin territory if they are consolidated with frozen vegetables.

I can think offhand of the frozen river trout production in Idaho, for instance. The only things moving in a frozen form out in Idaho are frozen french-fried potatoes and other potato products, and these trucks have provided a very valuable service to the frozen fishery packers in that area because for every 30,000-pound load of french fries, there may be 5,000 pounds of fish, and they just throw it on the back of the truck.

We had not experienced any difficulty until those grandfather carriers that had to get authority for the frozen vegetables had to get authority for the fish because the mixture of regulated with exempt destroyed the exemption of the fish.

We have experienced a reduction in the number of grandfather carriers that received authority to continue that mixture.

The figures that I recall offhand as a result of our preliminary study of these grandfather certificates is that although 97 carriers asked for authority to continue mixing fish, only 29 received authority, so to that extent we lost a substantial number of carriers.

We are under a further disability now whereby the carriers that were hauling these frozen potato products previously under grandfather rights are no longer able to haul them because of the Commission's decision that a frozen cooked potato is not a vegetable.

Mr. YOUNGER. Processed.

Mr. AUGELLO. Yes; it is "manufactured."

I don't know what it has been manufactured into, but it has been manufactured.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. No questions.

The CHAIRMAN. Mr. Keith?

Mr. KEITH. Thank you, Mr. Chairman.

Were practically all of the denials that were experienced by those 20-odd people or organizations based upon the kind of problem that Mr. Younger just outlined?

Mr. AUGELLO. No; I think it was based upon the fact that these carriers were unable to prove that they handled these fishery products in mixed loads as continuously and as substantially as the Commission required them to prove.

Mr. KEITH. You mentioned that the cost of fish had gone from about 7½ cents a pound to 8½ cents a pound in recent years; in other words, a relatively stable cost of the product.

Mr. AUGELLO. That is not cost. That is the return to the fishermen at the wharves.

Mr. KEITH. Yes; a relatively stable price. What has happened to the cost per pound in transporting this fish to the market?

Mr. AUGELLO. There have been no figures available on that subject

simply because of the exemption. There is no way to conduct an accurate survey of fish rates by truck.

Mr. KEITH. So you really do not know from your experience what is responsible for the substantial markup from 7½ cents to, say, 35 or 40 cents a pound, at least as far as the transportation factor is concerned?

Mr. AUGELLO. I am not sure that I understand you.

Mr. KEITH. I represent, as you may know, New Bedford, which is the largest scallop port in the world and has substantial other fish products as well.

Mr. AUGELLO. Yes.

Mr. KEITH. And any light that you could shed on ways in which the costs to the consumer could be kept down would be helpful. I was interested to know if your institute had a breakdown that would show the transportation factor as well as the original price for the fish at the wharf.

Mr. AUGELLO. No; I am sorry to say that those figures are just not available, but we do feel that the economical transportation facilities that we have now could not be continued at the same level under regulation.

Mr. KEITH. To what extent is the market for fish dependent upon the availability of these exempt carrier rates?

What I am getting at is that you mentioned Idaho and the possibility of shipping trout with potatoes. There might be other places in the country where there are substantial outshipments of vegetables where inshipments of fish could come and consequently you might find an area in the country where there would be a much greater per capita consumption of fish than in other areas.

Do you have any studies that would show that the availability of these favorable rates has directly influenced the per capita consumption of fish by geographical areas in the country?

Mr. AUGELLO. The perfect example of that is the illustration I gave concerning the increase in railway express rates. I don't think there have been any studies made, but we know, and we have friends in the industry who have come and told us this, that they have lost certain segments of this traffic simply because they couldn't afford to continue shipping at railway express rates.

Now, their inability to continue in these markets was caused in some cases by their inability to obtain substitute service, such as exempt truck service, for their small quantities. That is the problem.

There isn't any problem in getting exempt truck service for solid truckloads going from one point to the other, but when you have six, seven, or eight stops that require unloading 5,000 or 6,000 pounds at each stop, that is the difficult thing. That is why you must have that service at an economical rate that will permit you to get into the market. Without that you will lose the business.

Mr. KEITH. You mentioned that the per capita consumption of fish had not changed in years. You stated roughly 10½ pounds.

Mr. AUGELLO. That is correct.

Mr. KEITH. Do you have this breakdown by States or by area? I do not want to know it, but I just want to know if you have it available, and I do not want to take the time of the committee for you to find the answer. I would like to have it for purposes other than this bill.

Mr. AUGELLO. I just checked the bulletin from which I obtained this information. It is entitled "Fisheries of the United States, 1962," and I do not see a breakdown of per capita consumption by States, although it is possible that one is available. I would be very happy to determine that from the Bureau of Commercial Fisheries and have them furnish it if it is.

Mr. KEITH. If you could relate that to the availability of the exempt rates, that could be very helpful to me in studying this legislation.

Mr. AUGELLO. That indeed would make a very interesting study.

Mr. KEITH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Curtin, any questions?

Mr. CURTIN. Yes, Mr. Chairman.

Do I understand from you, sir, that it is only fresh fish moved by truckers that are exempt from regulation?

Mr. AUGELLO. No; fresh and frozen.

Mr. CURTIN. Frozen fish also come under that exemption?

Mr. AUGELLO. Yes, sir.

Mr. CURTIN. How about fish that are transported by air carriers?

Mr. AUGELLO. As far as I know, the rates on air freight are subject to CAB regulation on all commodities. I don't believe there is any exemption.

Mr. CURTIN. Is it your position that you would like to see the exemption extended to railroads, or are you not in favor of that?

Mr. AUGELLO. As I explained, Mr. Curtin, we are in favor of the removal of minimum rate controls if there has to be some change, but only if so.

Mr. CURTIN. You spoke about specialized transportation. When the carrier wants to get a certificate from the ICC for the type of merchandise he is transporting, does he not, in his application, specify what he wishes to carry?

Mr. AUGELLO. Yes, sir.

Mr. CURTIN. The certificate normally covers that particular type of merchandise, does it not?

Mr. AUGELLO. No, sir.

Mr. CURTIN. It is your contention that there should be a more general certificate so that the type of merchandise he could carry would be more general than it is presently?

Mr. AUGELLO. Only within the class of commodities that he is seeking authority to transport. For instance, we can't see any rhyme or reason in administering a law which is supposed to have the carrier's interest at stake, in a manner which draws distinctions between varieties of vegetables, for instance.

Mr. CURTIN. He gets a certificate that says he can, for example, carry frozen fish. He can carry all types of frozen fish, can he not?

Mr. AUGELLO. I am not prepared to answer that and from viewing the past administration of the act, I have great and grave doubts whether that carrier would be able to haul shellfish or whether he would be able to haul only a certain variety of shellfish.

Mr. CURTIN. You mean frozen?

Mr. AUGELLO. Yes.

Mr. CURTIN. In a frozen state?

Mr. AUGELLO. Yes.

Mr. CURTIN. But a certificate does not say one can carry frozen cod but not frozen shad or anything like that?

Mr. AUGELLO. Would you be surprised if I told you that I saw a grandfather certificate that said that the carrier could haul frozen peas?

Mr. CURTIN. Well, if he would ask specifically for that right, I would not be too surprised.

Mr. AUGELLO. When the law says that you are entitled to get grandfather rights for frozen fruits, berries, and vegetables. A pea is a vegetable as far as I know. I can't see any possible benefit to anyone to limit that carrier to peas in the future, even if he hauled only peas in the past.

Mr. CURTIN. The truckers have this right to haul fresh fish without regulation. How do you feel about the right to haul fresh and frozen poultry?

Mr. AUGELLO. That exemption is in effect at the present, sir.

Mr. CURTIN. Is this also a good exemption?

Mr. AUGELLO. Yes, it is.

Mr. CURTIN. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Brotzman, do you have any questions?

Mr. BROTZMAN. Yes, sir, one or two. I was just going over your testimony in my mind here, Mr. Augello. There are a couple of things I need to ask you to understand a little more clearly.

As I recall, at the outset you stated that you were for less regulation for the railroads, or something similar to that.

Going on into your testimony, then later you testified that you did not think that this would do the railroads any good, really, and then, as I recall part of your statement, you were finding some fault with either the basic act or the administration of the 1959 act.

If I understand H.R. 4700 correctly, it would in fact result in less regulation for the railroads.

My specific question that I am not quite clear on is are you in favor of H.R. 4700 or not?

Mr. AUGELLO. If you must have a yes or no answer, the answer is "Yes," but I think, to understand our position, it is only because the alternative is so unacceptable to us.

Mr. BROTZMAN. You are alluding to the other alternative of complete or more regulation, is that it?

Mr. AUGELLO. Of the trucks, yes, specifically H.R. 5201, wherein the Commission has recommended limitation of the exemption to vehicles having not more than three axles. That would destroy the fishery exemption.

Mr. BROTZMAN. You have answered my question. That is fine. Thank you.

I have no further questions, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Augello.

Mr. AUGELLO. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Ralph C. Lally.

I hope that we might have an understanding, however, if there is going to be any other summaries of statements that it will be limited to a summary of the statement, or otherwise I am going to insist on your reading it.

STATEMENT OF RALPH C. LALLY, PRESIDENT, NATIONAL BANANA ASSOCIATION

Mr. LALLY. Thank you, Mr. Chairman and members of the committee. I am Ralph C. Lally, president of National Banana Association with headquarters at New Orleans, La.

The association represents the members listed below; and in connection with the names of each member, there is shown the ports of entry through which bananas are imported by such member from practically all of the banana-producing countries:

Standard Fruit & Steamship Co., New Orleans, La., New York, Charleston, S.C., Los Angeles, Calif., San Francisco, Calif.

Ecuadorian Fruit Co., New York, Gulfport, Los Angeles, Calif., San Francisco, Calif.

West Indies Fruit Co., Tampa, Fla., Jacksonville, Fla., Galveston, Tex., New York.

Dow-Jenkins Fruit Co., Jacksonville, Fla., Tampa, Fla.

Parker Banana Co., Tampa, Fla.

Banana Supply Co., Miami, Fla.

Southern Banana Co., Houston, Tex., Galveston, Tex.

The association speaks on behalf of these members which represent approximately 45 percent of the bananas imported into the United States annually.

We appear here before your committee in support of H.R. 4700. This bill, as introduced on March 11, would include bananas in the agricultural commodities which would be exempted from minimum rate regulation. This is the result which we consider proper and desirable. We strongly urge that bananas be treated in this respect at other fresh fruits and vegetables, as they were so treated in all respects prior to the 1958 amendment.

Bananas, like other fresh fruits and fresh vegetables, are perishable commodities. In some respects bananas are even more exacting in their transportation requirements than many of the fresh fruits and fresh vegetables. Bananas must first be transported from the producing countries into the U.S. ports of entry, that transportation by ship requiring 2½ to 10 days depending upon the location of the producing country and the location of the particular port of entry. Following such water transportation, it is essential that the land transportation be the fastest, the most efficient, and the most economical form available.

Bananas require special services in the manner of handling, transporting, messengering, and temperature care. For example, they must be held at temperatures of not less than 52 degrees because at lower temperatures they will become chilled; and the temperatures in transit must not go above 60 degrees, as at higher temperatures they will ripen too rapidly in transit.

Most of our members are also members of the United Fresh Fruit & Vegetable Association of Washington, D.C., and a spokesman for that association will appear before your committee in support of this bill. He is much better qualified than I to speak in detail about traffic matters and I will save the time of the committee by saying that our association subscribes to the position of United Fresh Fruit & Vege-

table Association and to the detailed explanations and reasons which will be presented in support of that position.

There is, however, an important additional point with respect to bananas to which I wish to call the attention of the committee.

In specifying the agricultural commodities which would be exempted from minimum rate regulation under the bill, the language follows that of section 203(b)(6) except for bananas and a few other imported agricultural commodities. Under the language of section 203(b)(6), bananas are not now included in the motor carrier agricultural exemption. We believe they should be so included and that bananas should be treated the same as other fresh fruits and fresh vegetables not only with respect to the commodities exempt from minimum rate regulation under the pending bill but also with respect to the motor carrier agricultural exemption in section 203(b)(6) of the existing statute.

To accomplish this objective we urge that the committee consider and approve an amendment to the pending bill (H.R. 4700) which would amend section 203(b)(6) of the Interstate Commerce Act "by striking the word 'bananas' from the second proviso of that subsection."

The same reasons which support the conclusion expressed in the pending bill that bananas should be exempt from minimum rate regulation, equally support the conclusion that bananas should be exempt from motor carrier regulation to the same extent as the other agricultural commodities now included in the so-called agricultural exemption of part II of the act.

Prior to the amendment by the Transportation Act of 1958, bananas were exempt under section 203(b)(6). Under that exemption banana shippers and receivers were afforded an adequate, efficient, flexible, and economical transportation service by motor trucks.

Since the 1958 amendment and the withdrawal of the exemption, available truck service has been greatly curtailed and banana shippers and receivers have not been able to obtain the character of motor transportation service that they need. This is particularly true of the type of motor carrier equipment; bananas need a specialized type of truck, with floor racks and temperature controls. It is also important that experienced drivers who know how to handle bananas be employed. Such equipment and such personnel are often unavailable on certified motor truck carriers.

This situation has existed notwithstanding the so-called grandfather rights of motor carriers which had been engaged in banana transportation prior to the 1958 amendment. The Commission has tended to limit these grandfather rights to the precise route or territory in which a substantial service had been previously rendered. This leaves unavailable adequate truck transportation from many ports of entry to many destination points. Those motor carriers which have certificates for general transportation between such ports and such destinations are neither properly equipped to handle bananas nor have they competent personnel for that purpose.

This situation has created much hardship among banana shippers and receivers particularly to the smaller operators who must be served through partial unloading in transit. Many illustrations of the difficulties we have encountered might be given but that would unduly extend my statement.

I assure you that the banana trade, both shippers and receivers, have been seriously prejudiced by their inability to obtain adequate, flexible, and competent transportation service for bananas. Railroads cannot possibly furnish transportation to all points of destination and from all ports of entry.

Many ports of entry are not equipped for economical handling of bananas by rail. Many destinations are not reached from a particular port of entry by a reasonably direct rail route. The only way in which adequate transportation service can be restored to the banana industry is a reinstatement of the agricultural commodity exemption under part II of the act.

The fact that bananas are imported does not change their character as a raw agricultural commodity. For the reasons I have already outlined, from the standpoint of the domestic handlers of bananas, there is no good reason for treating bananas differently than any other fresh fruit or fresh vegetable in relation to transportation regulation.

The same is true from the standpoint of the foreign countries and their citizens engaged in the production and sale of bananas. I am sure you gentlemen are fully aware of the importance of this commodity to our friends in Central and South America. Those countries depend very much upon the sale and proper distribution of bananas for their economy and particularly their trade balance. It seems wholly unfair to them to deny to bananas, simply because they are imported, a particular privilege or exempt status accorded to commodities of the same character which are domestically produced.

I thank the committee for this opportunity to be heard and again urge that H.R. 4700 be enacted and I particualrly urge that bananas be included not only in the exemption from minimum rate regulation provided in the present bill, but also in the agricultural commodities exemption of part II of the Interstate Commerce Act. This latter result will require an amendment of section 203(b)(6) as I have suggested above, and we hope and urge the committee to include such an amendment in the pending bill.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Lally. We are glad to have your statement in the interest of the organization that you represent.

I guess I am a little bit confused about this. As I understood from the 1958 act, one of our colleagues on the committee offered an amendment on the floor of the House which was agreed to and which became a part of that act, and which I understood had the wholehearted support of the whole industry.

Mr. LALLY. Well, Mr. Chairman, I want to say this: I am not too familiar with what transpired in 1958, excepting that our National Banana Association was not organized at that time and a lot of the little fellows in this organization didn't have room to talk, and therefore they didn't have any representation at the time, and it was passed.

Now, some of the major importers, I must say, I think agreed to that, and of course the large trucklines I know agreed to that because they could then take hold of the little fellows.

I just want to give a quick example. We have some people in Texas that have two, or three, or four trucks. Why, it took 7 months for

us to get that little fellow certified so he could operate out of Houston. Yet he could operate out of Galveston, and Galveston is only 60 miles from Houston, but they just went round and round and between the large transportation truckers they just held this little fellow out until I got so mad I made up my mind to go down and try to do something and we finally came up with it.

The CHAIRMAN. Your complaint mostly, then, is with reference to the availability of transportation in this field?

Mr. LALLY. Right. Mr. Chairman, that is true. We have many problems in the banana business. We have to transport these bananas. Many times boats become disabled. We have to drop bananas at some ports where we can unload them and discharge them.

The CHAIRMAN. If there were to be a procedure adopted whereby there would be no entry requirement, in other words, you would not have to show convenience and necessity, but would have to publish the tariff for the Commission and competitors to see and know, what would be your reaction to that?

Mr. LALLY. I believe in the Commission. I believe in certain regulations. There is no question about that.

However, I will give you an example of what I know has been done by the Commission. To my knowledge there are three lines out of New Orleans to St. Louis that truck bananas. One fellow has a $1 rate. Another one has a $1.16 rate. Another one has a $1.20 rate. The same I know to be a fact in Tampa, Fla., where on a load from Tampa to Birmingham one fellow has an 85-cent rate and the other fellow has a $1.05 rate. That is because of the truckers, I assume, making that application to the Commission and they just granted it. I don't know. But, of course, everybody wants to have the dollar rate.

The CHAIRMAN. Of course, the procedure, which has long been established, is traditional and certainly most appropriate, that a common carrier will file a tariff with the Commission and if no one protests that tariff or rate, then within a certain time it becomes effective.

If anyone wants to file a tariff of 85 cents, or 98 cents, or 93 cents, or $1.05, and nobody protests that particular rate over a given route for a given purpose from point to point, then under the law it becomes final.

I do not know of a better way to handle the matter.

Mr. LALLY. I would like to see bananas exempted from the regulation and put in the same category as fresh fruits and produce and give us the right to deal with the railroads and with the trucklines on the rates that we require to do the business properly.

The CHAIRMAN. I am sorry that I do not remember just what all was behind the amendment and what we did in 1958, but I do know that during the consideration on the floor of the House this matter came up and it seems that the common carriers, the industry, and all came to Mr. Roberts with an amendment that they were agreed upon and offered it, and, as I recall, it was adopted on that basis. I may be wrong about it, but I do know that something happened with the banana amendment.

Mr. LALLY. No, I think you are right on that, Mr. Chairman, but I think over the 4 years that we have tried this thing out we have found

it is not working to our satisfaction and, therefore, we would like to have it changed, that's all. We made a mistake.

The CHAIRMAN. Is it that you cannot get the service, or is it that you cannot get——

Mr. LALLY. We cannot get the service. We cannot have a sufficient number of trucks. People are certified to go here.

I am just going to say certain people are certified from New Orleans to Arkansas, but they can't go into Missouri, or they are certified to go from New Orleans to Alabama, but they can't go into Georgia. They have certain limitations in this grandfather business as to where they can go, and we don't have freedom of action.

The CHAIRMAN. Are you having difficulty getting bananas, as an example, in Arkansas because of this or in Georgia because of it?

Mr. LALLY. Mr. Chairman, we have had at different intervals difficulties. You know how our population is moving into smaller areas.

I am just going to call out a couple of towns in your State like, for instance, Fort Smith, or El Dorado, or Hot Springs, Ark. We may have a customer out of Galveston that will want 100 bunches of bananas. He can't take 30,000 or 25,000 bunches of bananas in one day, but he can handle that quantity in maybe a week, so if we have a boat on a Monday we will put 300 or 400 bunches on this truck and we will say, "You stop at El Dorado and put off 125. Stop at Hot Springs and put off" so many, and that is intransit privilege we had in these trucks before that.

Now they are trying to eliminate these intransit privileges. They have not done it yet completely, but they are trying to do it; especially some of the large certified trucklines.

That is why I am begging you give consideration to this exemption and handle it the same as the fresh fruit and produce industry.

The CHAIRMAN. Any questions?

Mr. ROGERS of Texas. No questions.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. Mr. Lally, I presume that so far as you are concerned with these exemptions, you want "bananas taken out of the refrigerator," is that it?

Mr. LALLY. Oh, yes. We will give them all the refrigeration they need on the boats.

Mr. CURTIN. That is all, Mr. Chairman.

Th CHAIRMAN. Thank you very much, Mr. Lally.

Mr. LALLY. Thank you, Mr. Chairman.

Thank you, members of the committee.

The CHAIRMAN. The committee will recess until 2 o'clock.

(Whereupon, at 12:20 p.m., a recess was taken until 2 p.m., this same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order. Our first witness will be Mr. L. E. Ernst, general manager of the National Star Route Mail Carriers Association.

Mr. Ernst, you may proceed.

STATEMENT OF LAWRENCE E. ERNST, GENERAL MANAGER, NATIONAL STAR ROUTE MAIL CARRIERS ASSOCIATION

Mr. ERNST. Thank you, Mr. Chairman, and members of the committee.

I am Lawrence E. Ernst, general manager, National Star Route Mail Carriers Association, with headquarters at 301 East Capitol Street, in Washington, D.C.

First, I wish to thank you for giving me this opportunity to appear before this committee to express the views of the Mail Contractors' Association, with respect to enactment of a new law to be known as: The Transportation Act of 1963.

This proposed legislation was introduced under date of March 11, 1963, as bill H.R. 4701 and proposes to provide for strengthening and improving the national transportation system and for other purposes.

The testimony of the National Star Route Mail Carriers Association will be restricted to section 9(a)(1) of the bill, headed: "Simplification of Government transportation rates and procurement, transportation of mail by motor vehicle common carrier." The association opposes enactment of this section of the proposed law.

I have been employed in my present position for the past 7½ years, and prior to that was under civil service in the Bureau of Transportation, Post Office Department, for more than 37 years. I served as a clerk and an official in the postal field service and prior to my retirement I was Director, Railway Transportation, Post Office Department, here in Washington.

I believe that my 44 years of experience in the postal transportation qualifies me as an expert in this field of service and my statements are being made in the interest of all concerned.

Section 9(a)(1) of the bill proposes that the head of an agency, or such persons as he may designate, may negotiate the provisions and prices of contracts, agreements, or other instruments for the purpose of procuring transportation, including mail transportation services performed by common carriers by motor vehicle service.

This would, in my opinion, result in discrimination since it affords the Postmaster General, or his duly appointed agents the right to spend public funds without any control and would nullify section 3709 of the Revised Statutes as amended (41 U.S.C. 5), which reads:

> All purchases and contracts for supplies or service, in any of the departments of Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or service required may be secured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals.

Congress has determined, beyond a doubt, that the Post Office Department is obligated to provide service to the people of this great country of ours. Such service must be provided in an efficient and economical manner and by whatever means the Postmaster General considers to be in the public interest.

This is being done at the present time under existing star route laws, that has enabled the Post Office Department to provide good and

sufficient service to all of the post offices throughout the country for more than 100 years.

Officials of the Post Office Department cannot point out a single instance where the individual contractor has not been able to provide the required services and under conditions outlined by postal officials.

Mail transportation over the highway is now being handled on a fixed schedule set by the Post Office Department. The common carrier controls and sets the schedules of their vehicles. Therefore, the Post Office Department would place itself in the position of dispatching mail over an undesirable schedule of the common carrier, or paying a premium for the service on a schedule of the common carrier, or paying a premium for the service on a schedule of their choosing.

This could mean the stockpiling of mail to be carried as top loading with shipments of freight, et cetera. Furthermore, there would be need for additional time in the schedule, since the common carrier would need time to exchange his freight, in addition to the mail, and this would result in delay to the mail.

The schedules of present contractors have been expedited to the point where it is neecssary for many carriers to exceed the posted speed limit on the highway, and if they operate as much as 30 minutes late, they are assessed a fine.

Enactment of the proposed law would certainly leave much to be desired insofar as schedules are concerned, and would not be in keeping with present policy of the Post Office Department: "The Mail Must Go Through."

Furthermore, I do not see how such a law could be properly administered, without favoritism being shown. There are some 30 to 35 certificated carriers operating between Washington, D.C., and New York City. Which one will be selected to do the mail job, and on what basis will he be chosen. Would this not establish a private system of government within the agency, beholden to no one.

It must be pointed out that the Interstate Commerce Commission has disclaimed jurisdiction, under the Motor Carrier Act, of employees engaged in the transportation of mail under contract with the Post Office Department in vehicles used for that purpose.

Such a ruling has enabled the Postmaster General to route mail without restriction, and in any manner he thought to be in the public interest. This is the way it should be and the future policy should be as at present: first, service; second, economy; and third, competition.

The volume of mail fluctuates very substantially from day to day and that differs somewhat from the movement of freight or other traffic. However, if the Post Office Department could guarantee full loads, no doubt the common carrier would gladly furnish a schedule satisfactory to the Postmaster General. Yet, as I understand it, most of the common carriers have a certificate to operate over certain routes and between certain points.

This, in my opinion, further justifies the need of continuing our present system of competitive bidding. Exclusive mail routes may operate over any highway and between any points authorized by the Postmaster General. Many common carriers are now contractors on mail routes, and members of the association, and we are not opposing

the motor common carrier, but we do oppose any law that would give them exclusive rights without competitive bidding. This we believe would be discrimination in every respect.

The motor common carrier, as a rule, has not been able to compete with the private carrier through competitive bidding and we cannot understand how section 9(a)(1) of the bill would give the Post Office Department broader authority in obtaining over the highway service it needs under certain circumstances, except by paying a premium price. Any service the motor common carrier can provide can be provided by a private contractor and again it must be stated that the Post Office Department cannot cite a single case that would refute this statement.

Furthermore, enactment of this section of the bill can, and no doubt will, result in empire building, thereby eliminating local employment. Also there would no longer be the local supervision and interest now given to contract service as is required by the Post Office Department.

One of the newest programs to be adopted by the Post Office Department is the sectional center concept. It is the policy that a contractor cannot operate from one section into another, or should I say, cross the boundary line.

For that reason many routes are being discontinued, or changed, to meet the new policy, and if this section of the bill should be approved it would most certainly result in serious problems if the present sectional center concept is to be continued under present policy.

Our postal budget is in serious trouble at the present time. Certainly we would not want to add additional costs to the Post Office Department that are not necessary, as in my opinion this provision of the bill will in no way improve the postal service, nor reduce the cost of handling the mail.

All the Post Office Department needs to do to obtain over the highway service required is to follow present laws and advertise for bid. There are always several interested and competent parties who will submit a bid to provide the required service and at a reasonable price.

In order to protect the Post Office Department and guarantee prompt handling of the mail, star route contractors are now required to furnish bond, either a surety bond or personal bondsman. The proposed law would not require bond, and anytime the common carrier wanted to give up his contract, he could do so, without penalty, forcing the Post Office Department to employ a substitute carrier. This could result in dfelay to the mail and embarrassment to the Department.

The Post Office Department always publishes the schedule on which mail is to be transported; approximate volume to be handled, and size and type of equipment required to do the job. These requirements are always met, and what further improvement can there be in the handling of mail by the common carrier over the private contractor? Please do not overlook the fact that the private carrier is providing the required service, on a schedule authorized by the Post Office Department and at a reduced cost to the Department.

Present laws require all routes to be advertised and that the contract must be awarded to the lowest responsible bidder. This would not be true if the proposed change is enacted into law, and it certainly would

create a monoply which in itself is unconstitutional. If this proposed change becomes law it will result in a closed shop, so to speak, insofar as the motor common carrier is concerned. Surely no one wants this to happen.

Some 26,000 of the 35,000 post offices are now solely dependent upon highway transportation and most of the remaining post offices have truck service as well as railroad service. Schedules of all star route contractors are established and controlled by the Post Office Department which, in itself, should confirm the excellent service the private contractor is providing.

There is an old saying that we cannot mix oil and water, and in my opinion we cannot mix mail, with freight and express, for handling over the highway if the best possible service is desired, and that is as it should be.

The private carrier has provided all needed service in the past and will continue to do so in the future if permitted to do so. The private carrier has been called upon many times to take over the handling of the mail due to a railroad strike. They have always met the challenge, and in many cases have provided improved mail service to the areas they were called upon to serve and at less cost.

Again, I want to point out that present laws are adequate to provide any type of mail service the Postmaster General may need over the highways.

The motor common carrier, as well as the private operator, is privileged to compete for the business, the way it should be.

The motor common carrier does not need a law to establish him in the mail hauling business over the highway. All he needs to do at the present time is meet the competition of the private operator. Present laws permit the common carrier to bid on mail routes at any time they are advertised for bid, and they are not bound by the residential requirement imposed on the private contractor.

To single out the motor common carrier, exclusively, to do the job, as this bill apparently intends to do, will be discriminating in every respect. Our present laws permit the jobs for handling of mail over the highways, to be distributed throughout the areas where the service is needed. Furthermore our present laws permit the Postmaster General to seek the man for the job, rather than building a job for the man.

The proposed legislation would give the Postmaster General, in my opinion, complete control of moving the mail over the highways between all important points throughout the country, at a price he deems fair and reasonable, and to an operator of his own choosing.

The private carrier, would not have an opportunity to transport mail even though he might do a better job and do the job for less money, unless no certificated carrier was interested.

If this session of Congress deems such a law is needed in the interest of improved postal service, then the association wishes to recommend that consideration be given to granting present star route contractors a certificate of public convenience and necessity from the Interstate Commerce Commission or state regulatory body. This would permit the star route carrier to transport general commodities by motor vehicle on public highways in intrastate, interstate, or foreign com-

merce for compensation over regular routes, now in effect as authorized by the Post Office Department.

Such action would be in the interest of protecting present contractors now engaged in the transportation of U.S. Mail over the highways, and who have been so engaged for many years. They have considerable money invested in equipment for the sole purpose of providing the Post Office Department with required postal service. This would protect all present contractors and should insure their continued employment.

Furthermore, many of our contractors have reached the age where it would be almost impossible for them to get employment in industry and to have their contracts discontinued, as no doubt this proposed change would do, would certainly impose a very serious physical and financial hardship on many of them.

This proposed change could destroy the entire star route mail carrier system, which has provided the Post Office Department the means of excellent mail service for many, many years. A procurement through advertising and competitive bidding is the time honored method employed by the Government and why should the transportation of mail over the highway be the exception?

Rates for transporting mail via railroads and airlines are fixed by a regulatory body, thereby eliminating the competing aspect of the service performed by these carriers. The Post Office Department will contend that this authority is needed to place it in the same position in highway transportation as it is in other modes of transportation.

We submit that the situation prevailing in highway transportation is entirely different and cannot be equitably administered in any other way than by competitive bidding as now required by existing laws.

As a matter of information, I wish to point out that the largest single mail contract operating on the highway today is running between Cleveland, Ohio, and Pittsburgh, Pa., with C. F. Waite, Inc., of Akron, Ohio, as contractor. This contract could be canceled or permitted to expire and the services of a certificated carrier employed at any rate the Postmaster General desired to pay. Mr. Waite is providing excellent service, but he is not a common carrier.

Mr. Chairman, I am happy to have been privileged to appear before you and your committee and present the views of the National Star Route Mail Carriers Association and we are indeed grateful for the many courtesies extended to the association during the past years.

Also, I wish to assure this committee and officials of the Post Office Department that we want to work with you and that we are always interested in legislation that will improve the position of contractors and benefit the postal service.

We respectfully urge this committee not to report this section of the bill favorably. This section of the bill is discriminating against star route contractors and is proposed in total disregard of their best interests and the best interests of the public.

Is not the best policy, after all, one that permits equal rights to all as guaranteed by the Constitution of the United States, which says that no person shall be deprived of life, liberty or property without due process of law?

Thank you.

The CHAIRMAN. Thank you, Mr. Ernst.

Mr. Younger, do you have any questions?

Mr. YOUNGER. I have just one, Mr. Chairman.

If I understand you correctly, then all that you are recommending is that under section 9(1)(a) of H.R. 4701, simply strike, including the case of the Postmaster General mail transportation service performed by common carrier?

Mr. ERNST. That is right.

Mr. YOUNGER. Strike those words, that is all you are requesting?

Mr. ERNST. Yes, sir, we are requesting that particular phase of the bill be deleted.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Broyhill?

Mr. BROYHILL. I have no questions, Mr. Chairman.

The CHAIRMAN. I believe we had no testimony from your organization last year.

Mr. ERNST. Mr. Chairman, I was slated to appear before the committee. However, the committee adjourned prior to my appearance and my statement was included in the proceedings, sir.

The CHAIRMAN. How many star route carriers are there in the United States?

Mr. ERNST. There are approximately 10,000 contractors operating approximately 12,000 routes.

The CHAIRMAN. How many of those 10,000 would you say will be small star route carriers like delivering the mail from post office X to offices A, B, C, and D?

Mr. ERNST. Approximately 50 percent.

The CHAIRMAN. In other words, approximately one-half of the star route carriers are made up of these small routes that sometimes the Post Office Department is required to go out and drum up somebody to carry the mail for them?

Mr. ERNST. Not any more. They don't have to drum up anyone. Since enactment of Public Law 669 in 1948, they have been able to advertise and get competent bidders and award the contract.

The contractor has been privileged to continue to provide the needed services without interruption.

The CHAIRMAN. Could you estimate how many miles these star route carriers serve?

Mr. ERNST. No, sir; I could not.

The CHAIRMAN. I would suppose it would be difficult to get that information because there are so many of them that do not serve any of the patrons directly and there are some that do.

Mr. ERNST. The Post Office Department has that information, I am sure, because all contracts are evaluated on a mileage rate. When they advertise they state the one-way mileage in the advertisement and the number of trips required per annum, and that is the basis on which bids are submitted.

Then they evaluate the mileage rate from that information, sir.

The CHAIRMAN. How much mail do you think that these star route carriers transmit?

Mr. ERNST. You mean the overall volume?

The CHAIRMAN. Yes.

Mr. ERNST. No, sir; I don't. However, approximately 20 percent of the appropriation for transportation of mail is allocated to high-

way transportation, but that is far more than 20 percent of the volume of mail being handled.

The CHAIRMAN. That 20 percent for highway mail also includes the Post Office Department's own highway deliveries, too?

Mr. ERNST. No, sir. You mean rural route service.

The CHAIRMAN. No. There are certain highway post offices.

Mr. ERNST. They are also contract service and they come under the star route laws.

The CHAIRMAN. I thought some of them were operated by the Post Office Department itself.

Mr. ERNST. Not any more. That has all been converted to private operator.

The CHAIRMAN. That is interesting. Twenty percent is a pretty revealing figure to me. Twenty percent of the total goes into this movement. I had no idea it was that extensive.

Mr. ERNST. Mr. Chairman, about 26,000 of the 35,000 post offices throughout the country are dependent solely upon highway transportation.

The CHAIRMAN. Mr. Kornegay, do you have any questions?

Mr. KORNEGAY. No, Mr. Chairman.

The CHAIRMAN. Thank you very much, we appreciate your appearance here.

Mr. ERNST. Thank you, Mr. Chairman. I am glad to appear.

The CHAIRMAN. Mr. James Ide II, president, Midwest Livestock Carriers Association.

Mr. Ide, you might identify yourself for the record and proceed.

Mr. IDE. Thank you, Mr. Chairman.

STATEMENT OF JAMES IDE II, PRESIDENT, MIDWEST LIVESTOCK CARRIERS ASSOCIATION

Mr. IDE. My name is James Ide. I am president of the Midwest Livestock Carriers Association and president of the Ide Trucking Co., Inc., of Logansport, Ind.

I have with me Mr. Howard Johnson, secretary-treasurer of the Midwest Livestock Carriers Association and secretary and operations manager, Nelson Trucking Inc., Burket, Ind.

We are here representing ourselves and some 60 other truck operators, who in March of this year got together and formed an organization which we call the Midwest Livestock Carriers Association. I would like to submit a list of these carriers. They are from Indiana, Illinois, Ohio, and Pennsylvania.

For the most part, these carriers are exempt truck carriers of livestock. We are vigorously opposed to H.R. 4700 to remove the Interstate Commerce Commission's minimum rate power on bulk commodities and farm products.

Even with the minimum rate power, the Commission has been so liberal in approving low railroad rates on livestock that these truck carriers of livestock are finding it extremely difficult to make ends meet. Most of these carriers are already in very poor financial condition.

If H.R. 4700 is passed, and the railroads are given a blank check to charge any low rates they choose, these truck operators and many

more like them will be forced to fold up in short order and give their trucks back to the banks and finance companies.

We are not here pleading for a group of fly-by-night truck operators. The people on that list I have given you are decent, hardworking men who have been in this business a long time. Some of them have been in business 20 or 25 years.

It would seem very unfair to give the railroads a green light to arbitrarily ruin them.

We read a lot about equality. There is nothing equal about letting big railroad corporations smash small businessmen and deprive them of an honest living.

If you want equality, then put us under the same regulation the railroads have. We would be most happy to be regulated.

I have deliberately kept this statement as brief as possible because I did not want to go into a lot of detail that might not be of interest to you. At the same time, there is a great deal more we could tell you and we would be most happy to answer your questions. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Ide, I want to personally thank you for your statement. You have said it in a way I know exactly how you feel about it and what your recommendation is. It did not take you half a day to do it. It is refreshing to get statements like this.

Mr. Younger, do you have any questions?

Mr. YOUNGER. No, I think I understand exactly what the gentleman recommends.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Mr. Chairman, let me ask a question or two. You are representing a group of exempt truck carriers of livestock?

Mr. IDE. That is right.

Mr. KORNEGAY. How long are the hauls? That is, the average haul.

Mr. IDE. There are members of our organization that are strictly, you might say, local carriers within a State. In our particular case we haul live hogs from Indiana to Philadelphia, about 1,500 to 1,600 a day. That is about the range. We have everything from the very small off-the-farm trucker to the trucker who goes halfway across the United States.

Mr. KORNEGAY. Some of the distances are 1,500 or 1,600 miles?

Mr. IDE. Yes. That would be a small percentage.

Mr. KORNEGAY. On which type of run is the railroad giving you the most competition?

Mr. IDE. The long runs. I would say east of Ohio.

Mr. KORNEGAY. From Indiana to the east coast?

Mr. IDE. Yes.

Mr. KORNEGAY. Do they give you much competition on the short haul or intrastate business?

Mr. IDE. No. In our case when we haul off-the-farm we had to have these long hauls to more or less subsidize some of the service we gave the farmers for local hauling.

Mr. KORNEGAY. Do you haul directly from the farm to the east coast?

Mr. IDE. A lot of the truckers do. In our case we haul from concentration points to a packer in Philadelphia.

Mr. YOUNGER. Would the gentleman yield for one question, please?

Mr. KORNEGAY. I would be delighted to yield.

Mr. YOUNGER. What kind of backhaul do you get, Mr. Ide?

Mr. IDE. Absolutely none. We have specialized equipment to compete with the railroads. We use to haul a 30,000-pound load. In the last 3 or 4 years we have changed equipment and our load averages 43,000 to 44,000. The trucks are so constructed that the inside cannot come out of them.

Mr. YOUNGER. That is all.

Mr. KORNEGAY. In other words, you deadhead back?

Mr. IDE. That's right. There is nothing you can put in. We have not figured out anything yet. I might add one thing talking about regulations. I don't necessarily mean regulation to limit competition among ourselves or the railroads. If we were regulated I would have no objection or we would have no objection to the thing being unlimited to where additional carriers could get in. I don't see that is the problem.

Mr. KORNEGAY. Let me ask you one other question, Mr. Ide.

In your opinion, can you successfully compete with the railroad on the longhaul if the railroad charges a compensable rate?

Mr. IDE. We have up to date. A lot of us have. In our own areas there have been three bankruptcies in the last few years.

Mr. KORNEGAY. You would have no fear of this legislation if you knew the railroads would set compensable rates?

Mr. IDE. That's right. It is a question in my mind what a compensable rate is and how you figure it out. In the last 5 years the rates from our particular area to the east coast have been reduced by the consent of the Interstate Commerce Commission by about 25 percent. This particular job we have was $1.20. The railroad rate is 90 cents but we are still getting $1.10 because of the service.

Mr. KORNEGAY. Even with the railroads under ICC regulation they are giving you a difficult time?

Mr. IDE. That's right.

The CHAIRMAN. I don't believe I understand what you said a moment ago but you did not think it should be left wide open that just everybody and anybody would get in the business, do you?

Mr. IDE. That is not what I said. I said I would have no objection to leaving it wide open so that any responsible carrier can get in, not limited like your common carrier contracts. I did not mean to eliminate new competition of that kind.

As I understand, that is what the farm organization is objecting to as far as regulating these types of carriers, the fact that some of the fellows who have been in for 15 years will have a monopoly on that and might hinder the transportation of their products.

It can be regulated to the extent that the rates are publicized and listed with the ICC and the carriers, themselves, listed with the ICC.

The CHAIRMAN. What would you think about the exempt haul from the farm to the processors or concentration points?

Mr. IDE. I see no way that can ever be regulated.

The CHAIRMAN. And the true farm-market haul and then the regulation of the haul from the concentration points to the centers that you referred to.

Mr. IDE. I think that is the way it should be. I think a farmer should have the privilege. After it has been passing through the hands of a buyer or stockyard dealer and goes into interstate commerce, it looks to me that should come under the same laws and regulations that interstate shipments do. In our particular industry there are carriers on this list that operate as high as 60 and 70 trucks. In our own area there are carriers with three or four trucks and they are under ICC as far as the safety regulations are concerned. They check us every year for log sheets and safety measures. There are a lot of the smaller ones and some of them driven to it strictly from an economy standpoint that I don't think the ICC even knows they exist. They do not want to operate that way but they have to because of the rate structure.

The CHAIRMAN. Are you talking about from the concentration points to the larger centers in this kind of operation?

Mr. IDE. That is right. We have traffic in our own area that has never seen an ICC inspector and don't keep any log sheets. I am not blaming ICC but they just don't know they exist. They don't have names on their trucks.

The CHAIRMAN. Do you think that situation should be corrected?

Mr. IDE. I do. A lot of our own members have that situation. They have been driven to that by rates. I know a couple of carriers that are running single men operation to the east coast which is impossible to operate within the 8- to 10-hour limit from Indiana to Philadelphia. It cannot be done legally. It reflects in the insurance rates that we all have to pay. We happen to have two trucking companies, one a fully regulated company that hauled cement. I did not realize all these things until 2 years ago when we acquired this other company. Our insurance rate on the regulated company is about half of what it is on the nonregulated because of the high accident ratio among exempt carriers. I think any insurance company will tell you that.

The CHAIRMAN. Now, if we assume the information is correct—I am trying to figure out just whose testimony it was—we had a transportation witness to appear last year and in his testimony he included a rather long table that outlined product-by-product the 1960 ratio of carload freight revenue to out-of-pocket cost by the ICC commodity classes.

I am reminded Mr. Child was the witness. I observe in that table referring to cattle, that the rates which the ICC has approved for the railroad, according to this 1960 ratio of carload freight revenue to out-of-pocket cost, is 79. I assume 100 percent would be the ideal situation.

Mr. IDE. You mean for every dollar they took in then it cost them 79 cents? Is that basically what it means?

The CHAIRMAN. I think to the average individual like myself who doesn't know anything about it, when it comes to computing these rates and how they are arrived at, I would say "Yes." But to those who are aware of what the situation is and can figure out the formula which the Interstate Commerce Commission used in arriving at what is a compensatory rate or a just and reasonable rate, and out-of-pocket cost and so forth, they arrive at a formula of what becomes just and reasonable. Then in order to arrive at a just and reasonable rate here this is the figure they come up with, meaning that it is a

just and reasonable rate and the goods must move and they move at this particular rate. But to me it means that they are moving the goods at a reduced rate insofar as a true compensatory return is concerned.

The theory of the act, No. 1, it has to be just and reasonable. It has to be compensatory for a common carrier.

That means that one some movement it will be higher on some products than others, because if it is high enough on a given product and it doesn't move then we have provided no service.

That is by way of trying to explain something that I know so little about, so I am sure I made it very clear to you.

But this table does show that this ratio to out-of-pocket cost insofar as the rate is concerned on cattle, for railroads is 79. That is below a hundred. That would be the average or normal. You are in the business. Is it necessary that there be special low rates on the movement of livestock such as this in order for the livestock to move?

Mr. IDE. I would see no reason for it for this reason. As I said, in about 1955 or 1956 we initiated this long-haul truck service to the east coast. At that time the rates to the east coast ran from $1.25 to $1.45. The rates have gone down to as low as $1.90 in Baltimore to $1.15 in New York City. It has been driven down by pressure from the railroads with decrease after decrease.

The truckers themselves are being put in a position where they had to go out and get some business. It is something that will have to end sooner or later or there will be no trucking of livestock to the east coast.

I would say the majority of the truck companies are operating in the red at the present time.

The CHAIRMAN. Would you agree with me on a 1,600-mile movement of livestock the railroads have a much greater advantage in transporting than would individual trucks?

Mr. IDE. Really very little livestock moves that great a distance. I see your point.

The CHAIRMAN. I was using your own situation.

Mr. IDE. I said I hauled 1,600 hogs a day to Philadelphia. I think you said—you thought I hauled 1,600 miles.

The CHAIRMAN. I see.

Mr. IDE. I am sorry I didn't make myself clear.

The CHAIRMAN. I thought it was a long haul.

Mr. IDE. The bulk of the hauls are 800 to 900 miles on a maximum. From central Illinois the movement is east. From central Illinois the movement is west.

The CHAIRMAN. I am glad to get that cleared.

Mr. IDE. I think anything that can be hauled by 28 hours is moved by truck.

The CHAIRMAN. In other words, there is an advantage in one haul by truck of this particular product and another haul by the railroads?

Mr. IDE. That is right. There is a lot of feeder cattle moved from the West to a point in eastern Illinois but rail moves them. We cannot even aproach the rate that they have. We take them from then on east by truck because we have the time to do it.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Texas. Mr. Ide, do you haul from a stockyard location?

Mr. IDE. That's right. In my particular case.

Mr. ROGERS of Texas. Are you talking about people now who go out to the ranches and pick up cattle that they haul?

Mr. IDE. Several of our members take that in their operation. They have smaller trucks to pick up at the ranch and go to the terminals and then larger trucks that haul from the terminals.

Mr. ROGERS of Texas. You are not talking about people in the general southwest area when you say that you want to be regulated people who operate a business of going out to ranches where they load these cattle on the trucks and send them to Kansas and Iowa and Illinois or to the other points and feeding lots.

The thing that is disturbing me about it, I don't know what my people would think of your recommendation of being regulated. They might not want to do that.

Mr. IDE. Mr. Alcar is one of the biggest truckers in the West. I talked to him on the phone last night, and he said unless the livestock industry is regulated and done quick, he said he will have to quit hauling livestock.

Mr. ROGERS of Texas. I can understand his situation. I am talking about the small operators with one or several trucks who seem to be doing a very good business in the general southwest area.

Mr. IDE. That is the reason I said there should be free entry system and not eliminating competition. But where he picks it up off the ranch and goes 400 or 500 miles with it he should come under ICC jurisdiction for safety.

There is no reason why he should hesitate to have his rates published. I mean regulated to that extent, where the rates are published.

Mr. ROGERS of Texas. You are putting him under regulation. That is the end of it. You are putting him under something he is not under now.

Mr. IDE. That's right, I think there is a need for it. I think the majority of truckers realize that.

Mr. ROGERS of Texas. I can appreciate your situation all right. I think some of the boys down in my country might balk at that just a little bit.

Mr. IDE. Strictly from a safety standpoint what would be the difference if you loaded cattle on the range and took it 500 miles, or if you took them from the stockyards?

Mr. ROGERS of Texas. That has more to do with it than the safety. If it is for safety, the best thing to do is keep them at home and nobody would get hurt. There is a certain risk involved in all of this. These people are interested in making a living. They don't want to get into a situation where only large truck companies can operate.

Mr. IDE. I have nothing at all against small truckers. We are not a large trucker. I see no reason why one trucker where he had 50 would object to the law as far as being recognized by the ICC and being subjected to the ICC safety controls and rate controls and such as that.

Mr. ROGERS of Texas. I will have some of them write you because they sure object to it. As a matter of fact, they do not want to be regulated by anybody.

That is all I have, Mr. Chairman.

The CHAIRMAN. Are there any other questions? If not, thank you, very much, Mr. Ide.

Mr. IDE. Thank you.

The CHAIRMAN. Mr. Durward Seals.

Mr. Seals, you may identify yourself for the record and proceed.

STATEMENT OF DURWARD SEALS, TRAFFIC MANAGER, UNITED FRESH FRUIT & VEGETABLE ASSOCIATION, WASHINGTON, D.C.

Mr. SEALS. Mr. Chairman and members of the committee, my name is Durward Seals, I am traffic manager of the United Fresh Fruit & Vegetable Association. This is a national trade association, with headquarters in Washington, D.C., having nearly 2,600 members residing in all of the States, who are engaged in growing, packing, shipping, and distributing fresh fruits and vegetables.

Because of the nutritive value of fresh fruits and vegetables, their necessity in a balanced diet, and their significance as protective foods, they play an important part in the food supply of this Nation. The growing population has caused more production, which, in turn, has necessitated more transportation service. The importance of this service to the national economy is clearly evidenced by the fact that fresh fruits and vegetables represent about one-fifth of the total average per capita consumption of food in the United States. At its annual convention in February of this year our association passed the following resolution dealing with the minimum rate deregulation proposals:

> The United Fresh Fruit & Vegetable Association is in accord with the general objectives contained in the minimum rate deregulation proposals of the President's Message on Transportation of April 5, 1962.
>
> Where possible and practicable, greater reliance should be placed on the forces of competition in the determination of rates on fresh fruits and vegetables. However, we believe any legislation which seeks to accomplish these objectives should contain necessary safeguards to prohibit unjust discrimination by carriers among shippers, carriers, and localities, and should not curtail the basic rights and remedies available to shippers and receivers under the substantive provisions of the Interstate Commerce Act.
>
> Further, we favor retaining the present conference method of ratemaking procedures, authorized in section 5a of the Interstate Commerce Act.

We are offering this statement in furtherance of the above resolution. We are interested primarily in section 1 of H.R. 4700 which, as we understand it, would relieve the carriers subject to parts I, II, III, and IV of the Interstate Commerce Act from the minimum rate authority of the Interstate Commerce Commission in the transportation of bulk commodities, agricultural and fishery products, and passengers.

We support the statement contained in the President's letter of March 5, to the President of the Senate and the Speaker of the House:

> In my message to the Congress last year, I pointed out that the basic objective of our transportation system must be to assure the availability of fast, safe, and economical transportation services needed in the growing and changing economy to move people and goods, without waste or discrimination, in response to private and public demands at the lowest cost consistent with health, convenience, and national security.

We, therefore, support the objectives of section 1 of this bill to the extent that they would free the regulated carriers from Interstate

Commerce Commission control as to minimum rates on agricultural products. It is our understanding that the repeal of the minimum rate powers of the Commission will not affect the protection of the shipper's basic rights in sections 1, 2, 3, 4, and 6 of the Interstate Commerce Act, and that the continuation of these powers of the Commission is strengthened by the addition of the following language in paragraph (23):

> The Commission, however, shall retain all currently effective authority and power to determine that such a rate, fare, or charge is in violation of applicable provision against unjust dicsrimination or undue or unreasonable preference or advantage. When used in this paragraph, the terms "rates, fares, or charges" shall include all classifications, regulations, and practices relating thereto.

As we understand the language of paragraph (23) the suspension powers of the Commission, as set forth in section 15 of the Interstate Commerce Act, would continue to be in force. The Commission could continue to suspend rail rates for hauling agricultural and bulk commodities if it found them too high, or if they were discriminatory, or if they violated a specific section of the Interstate Commerce Act. However, such rates could not be suspended solely on the grounds that they were too low. The enactment of this section should permit the railroads greater managerial discretion in establishing rates on fresh fruits and vegetables and should permit "maximum reliance on the forces of competition."

Under the provisions of paragraph (23), as we understand it, the railroads would be granted immunity from the antitrust laws, in accordance with the provisions of section 5a of the Interstate Commerce Act, in establishing joint rates, fares, classifications, divisions, allowances, or charges which applied solely in connection with reasonable through routes.

This immunity would not apply in the establishment of single line rates under paragraph (23). We do not believe that this position is in conformity with the other provisions of H.R. 4700 which seek to give the railroads greater freedom from unnecessary regulation to enable them to compete more efficiently for this traffic. We feel that the Reed-Bulwinkle bill, now section 5a of the Interstate Commerce Act, has served a useful and beneficial purpose for shippers, for the carriers, and for the public generally. This law has permitted shippers and carriers to meet and discuss necessary rate adjustments among themselves. At the same time these adjustments have been publicized so that all parties of interest could inform themselves of the changes and participate in the hearing if they so desired. In many areas, adjustments on single line rates are as important as adjustments on joint rates and have an equal impact on that particular traffic. As far as we know, these orderly procedures for rate-making have been satisfactory to the shippers that we represent and it is our opinion this procedure should be continued for both single line and joint rates which would be affected by paragraph (23).

THE AGRICULTURAL EXEMPTION

This association, since the enactment of the Motor Carrier Act in 1935, has supported the retention of the agricultural exemption in section 203(b)(6) of the Interstate Commerce Act. At our 59th

annual convention in Los Angeles, Calif., on February 14, 1963, we adopted the following resolution reaffirming our position with respect to this exemption:

> The United Fresh Fruit and Vegetable Association reaffirms its position with regard to the continued exemption from economic regulation of carriers of agricultural products. Rapid, dependable, efficient, low cost, and flexible transportation is essential to the fresh fruit and vegetable industry, and the free choice of modes of transportation has always been essential to growers, shippers, handlers and has been beneficial to consumers.
>
> In this reaffirmation, therefore, we believe the beneficent agricultural exemption of section 203(b)(6) of the Interstate Commerce Act must be preserved and must not be in any way curtailed or restricted for fresh fruits and vegetables.

It is our understanding that neither bill now before this committee contains any provision to repeal, curtail, or modify the existing agricultural exemption. On the contrary, the purpose of this legislation is to relieve the railroads and other carriers of the minimum rate requirements now contained in the Interstate Commerce Act. President Kennedy in his message of April 5, 1962, indicated that this would be "the preferable way to eliminate the existing inequality."

As late as March 14, 1963, the Undersecretary for Transportation, Clarence D. Martin, Jr., in a speech before the National Defense Transportation Association in Washington, D.C., stated:

> The President again pointed out that there is an alternative solution to the problem. This would take the form of extending regulation to those areas not exempt. *This alternate solution always has been and still is a second choice.* [Italics by United.]

He further stated:

> We can meet the requirements of this principle by turning back the clock and extending the area of regulation. We also can meet these requirements by going forward and extending the liberty of competition to all participants in the market.
>
> The administration favors the path in which natural economic forces can achieve their own new balance in each transport market based on the inherent advantages of each mode and the initiative of each carrier management. The alternative, while meeting one of the basic principles, would have the less than desirable effect of using Federal regulation as a kind of umpire to allocate portions of the transportation market to each mode.

One of the principal railroad witnesses who appeared before this committee in connection with the minimum rate bill, H.R. 11583, in the second session of the 87th Congress, stated that he felt equal treatment of the several forms of transportation could be accomplished by exempting the railroads rather than by bringing other competing forms of transportation under regulation. In support of this statement I am quoting below an excerpt from the testimony of Mr. Jervis Langdon, Jr., president of the Baltimore and Ohio Railroad Co., made before this committee on July 24, 1962:

> The principal point I want to make in this statement is that this equal treatment of the several forms of transportation—an objective that everyone accepts—can only be approached (by legislation such as H.R. 11583) and ultimately achieved (by further legislation in the years ahead) by exempting the railroads and not by regulating the other forms. The reasons for this conclusion follow:
>
> First. There is the very practical consideration that regulation of water-carrier rates on bulk traffic and motor-carrier rates on agricultural and fishery products is deadlocked and thus impossible to achieve. On prior occasions, when the subject has been up, strong opposition on the part of industry, commercial interests, and particularly farm groups has presented itself, and there is no reason to believe that such opposition would be less articulate or effective if

the possibility came up again. Moreover, the carriers engaged in this exempt transportation are themselves opposed to regulation (pp. 265–266, printed record).

Mr. M. T. Richmond, president of Mercury Motor Express, Inc., of Tampa, Fla., in a statement submitted to this committee on behalf of the American Trucking Associations, Inc., had the following to say with respect to the agricultural exemption (pp. 623–624 printed record):

Those who favor the pending bill are very prone to say that the existence of the bulk commodities and agricultural commodities exemption, per se, discriminate against the railroads. Is this true?

With respect to the bulk commodities exemption, yes; and we believe that this exemption should be repealed and all carriers placed on an equal footing.

The agricultural commodities exemption, on the other hand, presents an entirely different situation. It is an exemption from regulation designed to fit the peculiarities of motortruck transportation and to help farmers. It was enacted so as to preserve the flexibility of the truck; its ability to go out into the field, everywhere, in all seasons; to move any and all types of agricultural cargo.

Farmers argue that they had special transportation problems which require the utmost in flexibility, a flexibility which only trucks could supply and which could be assured only by the exemption granted in 1935.

They also called attention to wide variations in production from year to year and season to season and by geographical areas. These changes caused major changes in distribution patterns. To accommodate these fluctuations the farmer had to have a great pool of trucks able to move quickly from place to place.

Congress decided that exemption of rate and route regulation would permit the necessary fluidity. Minor rate adjustments would attract trucks from one area to another according to relative need. Route freedom would permit delivery at any point. All this would benefit the farmer in moving his crops and animals to market.

Our object in presenting this statement to you is to dwell briefly upon the subject of so-called exempt haulers, regulation of whom has been injected into these hearings as a possible solution, in part at least, of the problems of the regulated carriers, both rail and motor carriers. Any legislation which would bring under complete Federal regulation the exempt haulers of fresh fruits and vegetables—now, by virtue of section 203(b)(6) of the Interstate Commerce Act, subject to regulation only as to safety and hours of service—would necessarily be in the nature of grandfather legislation, corresponding in character to that which was enacted in 1935 when the Motor Carrier Act (now pt. II of the Interstate Commerce Act) became law.

Section 206(a) of that act provided for restricting each motor common carrier in interstate or foreign commerce in such way that for the future it would be required to operate "over a route or routes or within the territory" over which or within which it had been in a bona fide operation. Pursuant to that restriction, the Commission, by either formal or informal procedures, limited all grandfather motor common carriers to the exact route or territory over which or within which they had continuously rendered a substantial service prior and subsequently to the grandfather date—June 1935. If such carriers were then unable to establish that they had operated with some regularity or frequency within a given territory, they were denied authority to operate there thereafter.

It is fair to assume that the exempt haulers of fresh fruits and vegetables who do not confine themselves at any given time to any

given territory would find it literally impossible to prove, in response to grandfather legislation, that they had operated regularly or frequently in even a substantial proportion of so vast a Nation as ours and would therefore find themselves holding a certificate to operate in a limited area only. This statement is borne out, I believe, by the experience of those formerly exempt motor carriers who were brought under regulation by the Transportation Act of 1958, Public Law 85–625, which became effective August 12, 1958. Section 7(c) of that act provided for "grandfather" rights for those carriers who were engaged on May 1, 1958, in transporting commodities as to which the exemption was removed and interim rights for carriers who began transporting such commodities between May 1 and August 12, 1958. According to the Interstate Commerce Commission there were over 950 applications filed for grandfather and interim operating rights. Approximately 747 of these applications were approved in whole or in part and 251 were denied. The matter of establishing rates on formerly exempt commodities, brought under regulation by this law, is still before the Interstate Commerce Commission.

But such restrictions would be exceedingly injurious to our members. The exempt haulers, who are now free to operate wherever they may elect, have performed an indispensable transportation service for our industry. Their ability to travel on short notice to a given producing area and to transport its perishable products to any given destination or series of destinations which the producers might specify, has enabled them to provide a flexible and invaluable mode of transportation which has not been, and could not be, performed by the railroads or by the certificated motor carriers. Without this type of transportation, many producers would have found it necessary to curtail production or to leave their crops in the fields because of their inability to obtain, when needed, a sufficient number of suitable rail refrigerator cars or suitable motor-carrier equipment for the transportation of these fresh fruits and vegetables.

It must be remembered that fresh fruit and vegetables are highly perishable, that most of them cannot be stored for a long period or carried over from one season to another, and that many of them (as, for example, berries and leafy green and yellow vegetables) cannot be stored at all, but must be harvested and sent to market immediately. Expedited transport has always been considered a must in our industry. Hence, it is extremely important that the growers, packers, and shippers have available to them at the many thousands of widely scattered points of production a large number of motor carriers who can transport the traffic to whatever destination may eventually be chosen by the shipper.

In 1961, there were approximately 1,300,000 carload equivalents of fresh fruits and vegetables being transported annually by rail and by motor carrier from producing areas to markets, and, of this quantity, about 806,000 carlot equivalent moved by motortruck, or about 62 percent. The exact figures as to the total movement of fresh fruits and vegetables by motor carriers are not available, but it is a matter of common knowledge that a very large proportion of the tonnage of fresh fruits and vegetables is moved by the exempt hauler.

The circumstances would be changed immediately and radically if the now exempt haulers found themselves, under regulation, with rigid

certificates which authorized them to operate in the carriage of fresh fruits and vegetables in a limited area as, for example, from South Carolina to the Eastern States. When there came a need for immediate transportation of perishables from South Carolina to the Eastern States, only those carriers holding a certificate to perform that transportation could answer the call.

And, as still another example, if there came a similar need on perishables from Michigan to St. Louis, only the carriers holding a certificate to operate between those points could answer the call. The examples could be multiplied many hundreds of times. Whereas now our shippers have available to them an almost inexhaustible supply of transportation by exempt haulers, they would almost certainly find themselves in the future with a sharply curtailed supply. There can be no question whatsoever that the effect upon the members of our association would be disastrous.

The Congress should not overlook, either, that if the exempt haulers were placed in a virtual geographical straitjacket by confining them to a given area of production and given destinations, they might very well find themselves at times without sufficient traffic to enable them to exist. Recent freezes in Florida furnished unfortunate examples of what I have in mind. Any carrier—and there would almost inevitably be many—which held a certificate to operate solely in the carriage of fresh fruits and vegetables between Florida, on the one hand, and our Eastern States on the other hand, would have been driven into almost immediate bankruptcy for lack of flexibility.

It could not have shifted its operation elsewhere, as it can do today. In transportation parlance, it could not have "followed the traffic." And other acts of God, such, for example, as floods along the Texas coast or protracted droughts, could likewise militate against the new exempt hauler if they were held within inflexible territorial limits.

And all of these unhappy results would be brought about nothwithstanding, as stated by the Court in *Interstate Commerce Comission* v. *Kroblin*, 212 F. 2d 555, that through the years since the passage in August 1935, of the Motor Carrier Act, 1935, every amendment which the Congress has made to section 203(b) (6) of the act has been toward broadening and liberalizing the exemption, and that the Congress, although often importuned to do so, uniformly and steadfastly refused or rejected amendments which would either directly or indirectly have denied the benefits of the exemption contained therein to truckers engaged in the carriage of exempt commodities.

It will be remembered, too, that the strongest criticism of section 203(b) (6) of the exempt carriers stems from the growing list of commodities which have been found by administrative and judicial interpretation to fall within the purview of that section. For many years after the passage of the Motor Carrier Act, 1935, until there came this fairly recent disposition—particularly on the part of the courts—to construe section 203(b) (6) as including a long list of various and sundry articles which had never before been believed to be the subject of exempt transportation, there had been scant criticism of section 203(b) (6). The carriage by exempt haulers of fresh fruits and vegetables, which have fallen within the scope of the exemption from the very beginning, cannot be found, therefore, to be the real seat of the complaints.

Any legislative action to curtail or eliminate the agricultural exemption would have serious effects upon the fresh fruit and vegetable industry as it would automatically shrink the supply of motor carrier transportation available for the movement of these highly perishable products.

The railroads and those motor carriers who hold certificates from the Commission could not possibly meet all of the shipping needs of the fresh fruit and vegetable industry.

For the past 15 years there has been a steady decline in the ownership of the RS-type refrigerator car, which is the end-bunker type of car most commonly used for the transportation of fresh fruits and vegetables. As of January 1, 1956, there were 100,602 RS-type cars in service; as of January 1, 1962, there were 71,119 such cars or a decrease of 29,483 cars. As of January 1, 1963, there were 65,243 RS-type cars, of which about 5 percent are regularly out of service awaiting repairs.

As of January 1, 1963, the rail carriers and rail-owned carlines also had 6,411 mechanical refrigerated cars in service, most of which are suitable for loading fresh fruits and vegetables. In all fairness we should point out that in 1956 the railroads handled 684,525 carloads of fresh fruits and vegetables, while in 1961 they handled only 487,675 carloads, a decrease of 196,850 carloads.

Some persons advocate that the exemption for fresh fruits and vegetables be limited to cover transportation by motor vehicle from point of production to a "local" or "primary" market. We have not seen nor heard of any simple, workable, or enforceable definition of what is a "primary" or "local" market for fresh fruits and vegetables. Fresh fruits and vegetables are marketed in many different ways. We believe it would be impossible to devise a fair, impartial, and enforceable definition of what is a "primary" or "local" market.

These suggestions are based on the Commission's long-held theory that the Congress intended from the beginning the "exemption" should benefit the farmer by affording relief only "in the transportation of his products to the point where they first enter the channels of commerce" (report on further hearing in Monark Egg Corp. Contract Carrier Application, 44 M.C.C. 15). But in an investigation entitled "Determination of Exempted Agricultural Commodities," 52 M.C.C. 513, decided April 13, 1951, the entire Commission rejected this theory by handing down the following finding:

> Although the object of the partial exemption as originally framed was to aid the farmer in marketing his products, the substitution of the present language for the words "unprocessed agricultural products" clearly resulted in a broadening of the exemption. That this is so was made plain by the chairman of the subcommittee sponsoring the amendment when he stated that pasteurized milk and ginned cotton were intended to come within the partial exemption. He also indicated that cottonseed would fall within the exemption. It must be assumed that Congress was familiar with the practices obtaining in the industry incidental to the marketing of these and other agricultural commodities.
>
> As hereinafter shown, the uncontradicted evidence in this respect is that the pasteurization, among other processing, and bottling of milk for sale to consumers, is customarily done at dairies in the larger cities throughout the country, and that the bulk of the cottonseed is sold by the farmer to the ginners. In the light of these practices and the clear intent of Congress that pasteurized milk was to be included in the partial exemption, irrespective of the fact that the milk was processed after entering the ordinary channels of commerce, or that the cottonseed was sold to the ginner, it is difficult to conclude that Congress

intended that other agricultural commodities processed (but not manufactured) or packaged for consumer use, regardless of ownership, should be treated differently. Moreover, to hold that the place at which the commodities are predominantly processed or packaged is controlling of the applicability of the partial exemption would, in many instances, prevent the movement by exempt vehicle of items processed or packaged by farmers themselves, a result obviously not intended by Congress.

* * * We conclude that the "channel of commerce" principle is not appropriate for use in determining the applicability of the partial exemption.

And in *Interstate Commerce Commission* v. *Kroblin* (N.D. Iowa 1953) 113 F. Supp. 599, affirmed (8 Cir. 1954), 212 F. 2d 555, certiorari denied 348 U.S. 836 on October 14, 1954, the court had this to say:

In the present case, the matters of importance are what was the purpose of Congress in enacting section 203(b)(6) and what commodities did it intend to include within its provisions? The parties are agreed that the purpose of section 203(b)(6) was to benefit the farmers. The amendment was not necessary to relieve the farmers of the expense and trouble of complying with the regulations of the National Motor Carrier Act where they operated their own trucks to transport their produce or farm supplies. They were relieved of that trouble by section 203(b)(4a) and section 203(b)(9) of the act. Section 203(b)(6) provided for exemption for commercial truckers transporting the commodities therein referred to. It is therefore clear that Congress concluded that the farmers would be benefited by having the commercial truckers engaged in hauling farm commodities exempted from the certificate provisions of the act.

In the present case it was claimed in oral argument by counsel for the defendant and the Secretary of Agriculture that the biggest benefit to the farmers of exempting commercial truckers engaged in hauling farm commodities from the certificate provisions of the act was the flexibility of operations permitted such carriers.

What the Court there said is fortified by other circumstances, some of which I give below. For example, when on the floor of the House of Representatives there was a full-scale debate of the proposed "exemption," Congressman Gillette propounded the following query to Congressman Holmes, one of the proponents of the bill:

What was the object in providing an exemption for carriers of livestock exclusively or farm products exclusively. Why not regulate that? What was the object of the exemption?

Mr. Holmes replied:

The object (of the exemption) was to help the farmer and keep him out of any regulation whatsoever insofar as handling unprocessed agricultural products or livestock on the farm. As an individual owner he would be exempt anyway and would not come under the provision of the bill.

We have a further example of the recognition by Congress that the "channels of commerce" theory is inappropriate in the refusal of the Senate Committee on Interstate Commerce to take action on a recommendation by the Legislative Committee of the Commission, made on May 27, 1939, to Senator Wheeler, then chairman of the Senate Committee on Interstate Commerce, that section 203(b)(6) be amended to read as follows:

(6) Motor vehicles used in carrying property consisting of ordinary livestock, fish (including shellfish) or agricultural commodities (not including manufactured products thereof) from the point of production to the point of primary market, processing, manufacture, or transshipment, if such motor vehicles are not used in interstate or foreign commerce in carrying any other property or passengers for compensation.

This, obviously would have limited the exemption to commodities in their first movement off the farm and would have seriously restricted

the application of the exemption. The Senate Committee on Interstate Commerce took no action upon this recommendation of the legislative committee.

And again in 1940 the Senate Committee on Interstate Commerce refused to take action on a proposal by the Commission's Legislative Committee, made to Senator Wheeler on January 29, 1940, that section 203(b)(6) be amended to read as follows:

> * * * or (6) the transportation of property consisting of ordinary livestock (including poultry), whole fresh fish (including shellfish), or agricultural commodities (not including manufactured products thereof), in the first movement from the point of production to the point of sale by the producer, or to the point of manufacture or transshipment. The point of production for fish shall mean the wharf or other landing place at which the fisherman debarks his catch, and the point of production for livestock or agricultural products shall include the point at which they were gathered for initial shipment to the point of first sale, manufacture, or transshipment. The point of first sale shall not be deemed to include the point of production.

On May 28, 1943, Senator Lodge introduced S. 1148. This bill would have amended section 203(b)(6) in the following manner:

> (6) Motor vehicles used in carrying property consisting of ordinary livestock, fish (including shellfish), or agricultural commodities (not including manufactured products thereof), by the producers of such property or by private carriers of property by motor vehicle, if such motor vehicles are not used in carrying such property or any other property, or passengers for compensation.

As will be observed, this bill would have removed all commercial transportation from the agricultural exemption and would thus have nullified subsection (6) entirely. The bill was never reported out of committee.

A recommendation by the Commission's Legislative Committee and offered by Senator Johnson of Colorado (then chairman of the Senate Committee on Interstate and Foreign Commerce) for consideration on April 2, 1952, would have changed section 203(b)(6) to read as follows:

> (6) The transportation of property consisting of ordinary livestock (including poultry), whole fresh fish (including shellfish), or agricultural commodities (not including manufactured products thereof), in the first movement from the point of production to the point of sale by the producer, or to the point of manufacture or transshipment; the point of production for fish shall mean the wharf or other landing place at which the fisherman debarks his catch, the point of production for livestock or agricultural products shall include the point at which they are gathered for initial shipment to the point of first sale, manufacture, or transshipment, and the point of first sale shall not be deemed to include the point of production * * *.

This, in effect, was a repetition of the recommendations made by the Legislative Committee of the Commission in 1939 and in 1940 that the agricultural exemption be limited to the first movement off the farm or wharf. Again, the Senate committee refused to approve these restrictive proposals. It is quite clear, then, that it was not the intent of the Congress when the "exemption" was made part of the Interstate Commerce Act in 1935, or since, that the benefits to the farmer should be those only which would flow to him prior to the entry of his products into the "channels of commerce."

To the contrary, the Congress recognized that the benefits to the farmer went far beyond that; that they consisted and consist of the availability to him for the transportation of his products from origin

to ultimate destination of the flexibility of the "exempt" operations.

For all the foregoing reasons, the United Fresh Fruit and Vegetable Association respectfully requests that this committee and the Congress do nothing to disturb the traditional exemptions provided for carriers of fresh fruits and vegetables. Such action would work a great hardship upon our industry without compensating gain for any other.

Mr. SEALS. I might add that my position with respect to the antitrust provisions of this bill are the same as Mr. Osterhart's and my response to your questions would be the same.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Mr. Chairman, I am just trying to find out something here. Do I understand that you are in favor of H.R. 4700 as long as it does not remove the exemption of agricultural products?

Mr. SEALS. That is correct, Mr. Younger.

Mr. YOUNGER. That is all.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Texas. Mr. Seals, how would your folks stand to benefit by the passage of this legislation?

Mr. SEALS. Very frankly I do not believe we would receive any direct benefits or any immediate benefits. I think it would be pretty much the same as the testimony of Mr. Osterhart this morning. We would benefit in an overall improvement of the rail situation, I believe.

Mr. ROGERS of Texas. As I understood Mr. Osterhart he was interested in this because he thought it would make his company make some more money. Your folks certainly would be interested in that.

Mr. SEALS. Yes, we are always interested in making money and intrested in selling more fresh fruits and vegetables. We feel at the present time we are making some headway in adjusting the rates on fresh fruits and vegetables on an individual basis. To the extent to which the bill would improve the financial position of the railroads or would translate technological improvements more quickly into the ratemaking procedures we would benefit. I do not believe it would be an immediate benefit.

Mr. ROGERS of Texas. The reason I am asking these questions is that I have received some mail from some people who have indicated to me that if this bill or a measure of this kind passes, that is, some measure in connection with the President's recommendation passes, that it will redound to the benefit of the consumers of this Nation because it will enable the processors or manufacturers to reduce the cost of their product and thereby pass that on to the consumers. What is your thinking on that? How long do you think it will be before apples would be 10 cents a dozen cheaper?

Mr. SEALS. We feel they might not be any cheaper immediately but as long as we retain the agricultural exemption we feel that we can do a better job of marketing.

As far as the repeal of the minimum rate power on rail rates, I do not believe that would be translated very quickly to us. However, should there be a substantial reduction in rates, that reduction would be reflected immediately in our prices.

Mr. ROGERS of Texas. You say do a better job of marketing. Somebody is going to profit by this and if the consumer is going to benefit

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by it then it will be your group or it is going to be the transportation group. Otherwise there is no need for this legislation.

Mr. SEALS. I am not an economist. I don't believe I could trace how this money would be passed along. I think any change like this which permits the carriers to take advantage of the technological improvements eventually will be passed along all the way down the line to the consuming public. I would hesitate to guess when that would occur.

Mr. ROGERS of Texas. I am glad you added that because, as I understand you at the present time these people who have been writing me saying that unless we do pass this legislation we are denying the consumers of this Nation the right to buy products at a cheaper price because they can be hauled cheaper, they are just starting from the wrong premise; aren't they?

Mr. SEALS. I would agree with you, yes.

Mr. ROGERS of Texas. Thank you, sir.

The CHAIRMAN. Mr. Broyhill.

Mr. BROYHILL. Mr. Chairman, I would like to follow up on what Mr. Rogers has said.

Wouldn't you agree that if this legislation was passed and it did give you and members of your association lower costs that this would tend to reduce the pressures for higher prices?

Mr. SEALS. We have a commodity, fresh fruits and vegetables, which is on a day-to-day basis. You cannot hold them. Our prices fluctuate according to production and supply and other factors. I would hesitate to say just how much of that price would come down.

I will definitely say that if we lose the exemption that our prices will be increased because our freight rates will go up. That is our primary concern here, the protection of the agricultural exemption. Since that has been suggested as an alternative, we are apprehensive if a compromise occurs that they will whittle on the exemptions. We want to retain the agricultural exemption. That is our primary reason for being here.

Mr. BROYHILL. No other questions.

Mr. ROGERS of Texas. You said if the exemption is done away with the freight rates will go up and therefore the cost of your product goes up. The converse of that, if the freight rate goes down, do you mean to tell me that the price of your product will go down?

Mr. SEALS. It will fluctuate according to the market.

Mr. ROGERS of Texas. You based the raise in the price of your products on the increase in the transportation rate due to the abolition of the exemption. In other words, to simplify it, if the transportation rate goes up then your products go up to absorb that?

Mr. SEALS. It has to go up.

Mr. ROGERS of Texas. My point is, if it comes down why doesn't the price of the products come down?

Mr. SEALS. They do vary, we have extreme variations.

Mr. ROGERS of Texas. I am not talking about the supply. I am talking about the transportation.

Mr. SEALS. Where we have had increases in freight rates over a period of time. I think we have had about 16 since 1946, our prices have reflected those increases.

Mr. ROGERS of Texas. But you have not had any reductions in freight?

Mr. SEALS. Yes, we have since that time.

Mr. ROGERS of Texas. Do your prices reflect those?

Mr. SEALS. Yes, they have reflected it. I couldn't point to any specific one.

Mr. ROGERS of Texas. Is it the same percentagewise when it goes up, if it goes up why doesn't it come down?

Mr. SEALS. I wish I could answer that question. I don't know.

Mr. ROGERS of Texas. That is all.

The CHAIRMAN. Thank you very much, Mr. Seals, we appreciate your statement.

Mr. SEALS. Thank you, Mr. Chairman.

I would like to submit a statement of the Western Growers Association for the record, filed by Mr. Frank W. Castiglione.

(The statement referred to follows:)

STATEMENT OF WESTERN GROWERS ASSOCIATION, SUBMITTED BY MR. FRANK C. CASTIGLIONE

The Western Growers Association represents the vegetable and melon industry of Arizona and California. The association has been in existence since 1926, and speaks on behalf of growers and shippers in these two States who ship more than 300,000 carlot equivalents of fresh farm produce to the Nation's markets annually. This represents over 40 percent of the Nation's total production of these foodstuffs.

While we are interested in both H.R. 4700 and H.R. 4701, we are more particularly concerned with H.R. 4700 which would exempt certain carriers from minimum rate regulation in the transportation of agricultural commodities.

This association has appeared before the Interstate Commerce Commission on most of the ex parte cases as well as many other proceedings. At the present time, the entire Commission is considering the vegetable case known as I.C.C. 31711, which was instituted by ICC on its own motion in January 1955 to determine the justness and reasonableness of rates on fresh vegetables shipped into the eastern part of the United States.

After 8 years of investigation, including thousands of pages of testimony, the Interstate Commerce Commission examiner recommended that rail rates from western territory be increased as much as 34 percent to the Nation's markets. Additionally, the examiner urged that the rates he recommends be established as "minimum rates."

During this same 8-year period, however, the carriers themselves have reduced the rates on our commodities in the form of incentive dates, a schedule of rates whereby through heavier loadings of a car a lower rate per hundredweight is assessed. Moreover, the carriers recently established a flat rate per car, permitting the shipper to load as much of his production into a car as he desires, at a flat charge, again lower than the decreased incentive rates. The vegetable case was continued by the Commission even though the carriers worked out solutions towards lowering the per-unit cost to shippers. This has served to bring the rail carriers greater per-car revenue and the grower lower transportation costs. Continuation of Interstate Commerce Commission's authority to impose minimum rates will serve to harass joint shipper-carrier programs such as these, whereby lower transportation costs can be worked out in furnishing foodstuff to the public.

Let's take a look at what was going on as far as the motor carriers were concerned. During the period from 1950 to 1962, the exempt truck haulers increased their truckload percentage from California on the lettuce movement by 385 percent, while at the same time improving their transit time, lowering their rates, and providing more modern equipment. Last year over 28,000 truckloads of lettuce moved from California and Arizona in interstate commerce. It is also interesting to note, during this same period of increased service activity on the part of the motor carriers, three new producing districts have been put under cultivation in the Arizona desert, including the Willcox, Red Rock, and Aguila areas. Better and more flexible service—whether it be by motor carrier or

rail—increases the distribution and consumption of fresh produce and at the same time improves the nutritional diet of the consumer.

Naturally, with this type of growth along with the continued need for flexible and better transportation, western shippers must be accorded the "agricultural exemption," which Congress, in its wisdom, established in 1935. They favor extending the same privileges to the railroads so they, too, can equally improve their transportation picture. Presently, the shipments of California-Arizona fresh vegetables and melons, citing only six leading commodities; viz, asparagus, carrots, celery, lettuce, tomatoes, and cantaloupes, shows 60 percent moves by rail and 40 percent on exempt motor carriers. This percentage will vary from commodity to commodity and from season to season. The trend, however, continues to show a steady rise each year in favor of the exempt motor carriers. This is a very clear indication of the demand for flexibility and expedited service. Delivering farm-fresh vegetables and melons to the consuming areas must be done in a most expeditious manner at the lowest possible cost if these produce farmers are to survive and the public given fresh produce at the most reasonable prices.

We believe with the free enterprise system progress takes its biggest step. Our vegetable-melon shippers and growers receive no Government subsidies nor price supports and market their produce on a competitive basis. It works to their satisfaction, keeping the best produce available to the consuming areas at the lowest possible cost, prices being determined by supply and demand. There is no reason to believe that public transportation cannot exist under the same circumstances and competitive free enterprise conditions.

We have gone on record in favor of this type of legislation and have a standing policy of fostering any legislation which will maintain or serve to expand the flexibility of our national transportation service and provide fast dependable schedules for distribution of perishable foodstuffs to the Nation's markets.

We believe this legislation to be in line with this policy and advocate that these bills be approved.

The CHAIRMAN. The next witness will be Mr. Matt Triggs. The Montana Wool Growers Association requested to be heard but they do not have a spokesman here. They have asked for their statement to be included in the record, and, without objection, it will be included at this point.

(The statement referred to follows:)

STATEMENT OF EVERETT E. SHUEY, SECRETARY-TREASURER OF THE MONTANA WOOL GROWERS ASSOCIATION

This statement is by authority of the board of directors of this association and in accordance with resolutions passed by the membership. Our organization has approximately 3,700 members who produce wool and lamb for market. The principal market for lamb is in the New England area and the west coast. Our market for wool is in the Boston area and the Southeastern States.

The location of these markets at great distances from the production source make transportation a vital factor in the cost of moving our products to point of sale. Hence, competitive ratemaking is a matter of great and increasing significance to the industry.

Many of the members of this organization are producing wool and lamb from range flocks of sheep. In addition, we have many members who market their wool through pools. They are small, farm-flock-type operators who must join together to find economical marketing methods for their wool. Many of these pools own or use warehouses located at railroad sidings and depend primarily upon railroad transportation. Last year the 31 wool pools in Montana marketed over 5 million pounds of wool in this manner.

Total wool marketed from Montana during 1962 was 14,581,000 pounds, grease basis, including pooled wool and that from individual producers. This is a very significant part of the entire wool production of the Nation, since Montana ranks fourth in wool production in the United States.

The wool industry faces increased competition in all markets, not only from synthetic and natural fibers within the United States, but also from imported wool and wool products. This competition makes even more vital the necessity of keeping rates fully competitive at all times with rates used by shippers of competing products and with producers of competing fibers in other areas.

Lamb is the principal meat product of our industry. It is, likewise, a highly competitive product, our industry now being engaged in an expensive nationwide campaign to increase consumption of lamb. The price of this product on the meat counters is a highly important factor in consumer reaction, and transportation is an important item in determining both market price and returns to producers.

Montana produces lamb from its ranges and from farm operations. The majority of these lambs are fattened for market in feed lots. Transportation is involved in two stages before the final market is reached.

The legislation currently under consideration, H.R. 4700, would remove the regulative control over minimum rates on agricultural products, including wool and lamb. Trucks now are free to reduce rates on these products as they please. We see no reason why railroads should not also be free to reduce their rates on wool and lamb in the same manner.

Our efforts to obtain rate reductions in the past have been successful in several instances. However, there is a delay in obtaining approval of Interstate Commerce Commission and in making the rates fully effective, which could and should be eliminated. Our wool and lamb production is a seasonal business, and fast action in rate reductions would be most valuable to us in meeting fast moving competition. If this is available in one mode of transportation, it most certainly should be in all forms which we use.

Even though this bill would not bring about full equality in ratemaking procedures, and we feel shippers are entitled to deal with all transportation forms on an equal basis, it is the feeling of our association that the features of this bill which would facilitate rate reductions on the products of the sheep industry would be most beneficial. Likewise, we feel these producers must have the continued benefit of conference ratemaking. A majority of our members have neither the facilities nor the ability to take over the function now performed by the carriers in this ratemaking procedure. We consider it vital and essential.

It is my understanding that nothing in this bill will remove the necessity for rate increases to be heard and considered in the manner now in effect, with full ICC control over such increases. It also is my understanding that the present authority of the Interstate Commerce Commission over matters of preference, prejudice, and discrimination in rates would not be disturbed. This would seem to provide adequate protection to shippers.

This association has traditionally favored freedom of competition and enterprise in the production of wool and lamb. We feel this same spirit should be embodied in legislation for the transportation industry.

I should like to call your attention to, and make part of the record, the following resolution adopted by the National Wool Growers Association at its annual convention in Las Vegas, Nev., January 23, 1963. The Montana Wool Growers Association is affiliated with this group and supports this resolution: "The National Wool Growers Association supports Federal legislation which would free railroads to make compensatory, competitive rate reductions on bulk and agricultural commodities in a manner which can better serve the wool and sheep industry. This legislation must preserve prohibitions against unjust discrimination and monopoly."

The CHAIRMAN. You may proceed, Mr. Triggs.

STATEMENT OF MATT TRIGGS, ASSISTANT LEGISLATIVE DIRECTOR OF THE AMERICAN FARM BUREAU FEDERATION, WASHINGTON, D.C.

Mr. TRIGGS. I had the privilege of appearing before this committee a year ago on the same issue.

The CHAIRMAN. If you will permit me to say so, I think at the outset in order to identify yourself, this is Matt Triggs, assistant legislative director of the American Farm Bureau Federation with addresses here in Washington, D.C.

Mr. TRIGGS. Thank you, sir.

Our people did adopt a policy favoring first the idea that we should have less rather than more regulation in the area of transportation.

Second, the idea that changes in costs should be reflected in rates as rapidly as is feasible.

And third, they felt that these objectives would be accomplished by the elimination of minimum rate control, provided that the authority to reject or suspend discriminatory rates would be retained in the bill, and provided that such antitrust laws as were necessary to prevent predatory pricing practices be made applicable. Our people have a great deal of faith in the antitrust law provisions as a means of preventing predatory pricing, not so much because of the participation of the Department of Justice in the situation, but primarily because of the treble damage provision of antitrust law.

They feel that with this treble damage provision that a railroad or any other carrier would have to proceed with great caution for fear that it would be subjecting itself to major damages if they were subsequently tried on a private damage suit and found guilty of predatory pricing.

We do not feel that the alternative procedure in the President's message is one that is at all acceptable. We do not believe that this would accomplish equitable regulation between various modes for several reasons.

First, it does not aid railroads in meeting their major competition which is private trucking, private and contract water carriers, and pipeline carriers.

Second, because the Congress never yet has approved an extension of regulation without authorizing grandfather rights to those presently engaged in the business.

So all of those concerns now engaged in the business would continue to be engaged in that business even if the exemption were completely eliminated.

Finally, and most importantly, there are certain conditions of transportation which are so much better handled by trucks than by railroads that to extend regulation to truck transportation of farm products would not really improve the situation for the railroads. The transportation would merely move to private and cooperative carriage, not to the railroads. Fortunately we are in a position to document this last charge, and we do at great length in our statement.

In 1958, Congress amended the statute with respect to classification of a number of commodities. One of those was frozen fruits and berries. You would suppose that the extension of regulation to the truck transportation of frozen fruits and berries would improve the competitive position of the railroads.

But the fact of the matter is that since regulation was extended to truck transportation of frozen fruits and berries that the railroads have lost more of this business. Their percentage of the total traffic has declined precipitously. The same is true with respect to the transportation of frozen vegetables. Truck transportation of frozen vegetables was regulated but the railroads continued to lose the business.

The same thing is true with respect to the transportation of bananas. Rate regulation was extended to bananas shipped by trucks. You might suppose that this would mean that the railroads would get some of that business back. They have not. The percentage of

bananas moving by truck has declined since rate regulation was extended to truck transportation.

I think there is no factual evidence at all that the elimination of the agricultural exemption would result in any major change or transfer of business from the trucks to the railroads or from any other mode to the railroads.

So this does not result in the equitable regulation that is, I am sure, our mutual objective.

The balance of our statement is directed to the question of the imperative necessity of the agricultural exemption for the efficient marketing of farm products.

I am not going to review this. I reviewed this in detail in our statement a year ago. I am sure that the committee appreciates the factors involved.

That will terminate my verbal statement.

The CHAIRMAN. Thank you very much, Mr. Triggs. We appreciate and we are looking forward to having your entire statement included in the record.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. I have just one thing, Mr. Chairman. You understand, Mr. Triggs, there is nothing in this bill which removes the exemption.

Mr. TRIGGS. This is correct. There are other bills before the Congress that do, however, and I think the two are associated together in the committee's consideration.

Mr. YOUNGER. We are considering H.R. 4700 and H.R. 4701 in this particular hearing.

Mr. TRIGGS. Yes, sir.

Mr. YOUNGER. There is nothing in here that removes the agricultural exemption.

Mr. TRIGGS. That is correct, fortunately so.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Texas. Mr. Triggs, what do you base the need for the agricultural exemption? What basic premise?

Mr. TRIGGS. It perhaps can be best described briefly by the word "flexibility." A truck hauling products can start from any point, go in any direction, to any market. This is crucially important from the standpoint of marketing farm products. Trucks move directly from the farm all the way to the market in many cases. This is particularly important with respect to marketing of livestock. To have to use a farmer's truck to haul livestock to a terminal of some kind where a railroad or a common carrier truck would pick it up would be an unnecessarily expensive operation.

Furthermore, those terminals don't exist in most areas. If you had to rely on common carriers to get livestock to market in most parts of the country there would be no way to do it from a practical standpoint.

The fact that rates are not regulated is also an advantage in that they can fluctuate freely to attract into a local traffic such trucks as may be available and that can be attracted by higher rates. This is all important in moving a seasonal crop because we cannot expect common carrier trucks to stand by with equipment all through the

year and be available at harvest peak to move large volumes of products.

Mr. ROGERS of Texas. Could you say, Mr. Triggs, that basically it would be the marketability based upon the proposition, mainly, the source at which you must pick up these farm products, and, secondly, because of the perishability?

Mr. TRIGGS. Both of these factors are very important. Let me also point out that a very large percentage of livestock and hay and grain are moved from one farm to another farm. How are you going to regulate rates for a movement of that kind? It is just not practical.

Mr. ROGERS of Texas. I just wanted to get your basic reasoning on this, because we have had some testimony here today advocating regulation of the hauling of livestock. What would be your position on that.

Mr. TRIGGS. We would be very much opposed to rate regulation on handling of livestock. We would point out that the conditions of transportation are such that it is completely impractical to apply rate regulation. On some farms, the farmer has good loading facilities; on others, he does not. In some cases, the farmer himself and his help load the truck; in others, they cannot. Some farms are located right on main highways; other farms are located way in the back country over narrow and winding roads. The conditions of transportation are so different from farm to farm that to regulate rates is completely impractical.

Mr. ROGERS of Texas. And you don't think that the passage of this bill would create a situation because of the long hauls of agricultural products that it would put the truckers out of business that are now hauling?

Mr. TRIGGS. I think to some extent that railroads will be able to compete more effectively if this bill is enacted, and that they will put some of the exempt carriers out of business. We have no objection to this, so long as they do it by economic means and not by regulation.

Mr. ROGERS of Texas. Do you feel, Mr. Triggs, that there will be a reduction in the cost of the transportation of farm products by virtue of the passage of this bill?

Mr. TRIGGS. Yes; I think there will be some. I don't expect that there is going to be any revolution in ratemaking. I think in many cases that the railroads are going to be able to move more rapidly to meet their competition. They are not going to be subject to the nearly 2 years of delay that the Southern Railroad was subjected to under the present procedures.

Mr. ROGERS of Texas. Is it the position of the Farm Bureau Federation that if there is a reduction in this transportation cost that will be translated into a cheaper price to the consumer?

Mr. TRIGGS. Yes; we feel that this bill would aid in accomplishing that objective.

Mr. ROGERS of Texas. How long do you think it would be before some effectiveness in that area could be visualized?

Mr. TRIGGS. I would suspect it would be rather soon, in the case of grain. I think we are on the threshold of a major technological breakthrough in the hauling of grain.

Mr. ROGERS of Texas. You mean cheaper rates?

Mr. TRIGGS. Cheaper rates.

Mr. ROGERS of Texas. Cheaper bread?

Mr. TRIGGS. Improved equipment resulting in lower rates.

Mr. ROGERS of Texas. What I said was "cheaper bread." I was thinking about wheat.

Mr. TRIGGS. I am sure, if railroads are able to put rates made possible by improved technology in effect rapidly, that this will be an incentive for many other railroads to follow the example set for them by the Southern Railroad, and that this will affect the prices paid by consumers.

Mr. ROGERS of Texas. Mr. Triggs, you were talking about bananas, and we had a banana man here before lunch. He wants out from under this regulation that he was put under.

Mr. TRIGGS. I don't blame him.

Mr. ROGERS of Texas. That is the reason I was asking the questions to get it clarified in my own mind whether you were supporting regulation of bananas, or transportation of bananas, or wanted that repealed.

Mr. TRIGGS. We don't have a single banana producer, as far as I know, in our membership.

Mr. ROGERS of Texas. You would take one, though, if he showed up?

Mr. TRIGGS. Yes, sir. I would think that the banana industry would want to get out from under rate regulation. I think it interferes with the efficient distribution of bananas.

Mr. ROGERS of Texas. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. You agree with the proposal here that the railroads should be permitted to publish minimum rates without restrictions, other than prejudices and advantages, the discriminatory monopolistic practices?

Mr. TRIGGS. Yes, sir.

The CHAIRMAN. Otherwise, you approve or recommend that railroads be permitted to transport agricultural products, as so described here, without other limitations on a minimum rate?

Mr. TRIGGS. Yes; subject always, of course, to the antitrust provisions, which we think are very important.

The CHAIRMAN. Speaking about grain, there are those interested in the milling problem. Mills who feel that, if this were to be done, this would disrupt their industry. What would be your comment?

Mr. TRIGGS. I would agree that there is going to be some disruption. The only question is whether disruption comes at the time technological improvement is demonstrated to be feasible, or whether it comes a year or two later, after we go through the tortuous and cumbersome process of getting rates changed.

The CHAIRMAN. Do you think ultimately it would mean that a flour mill would move from where the grain is produced primarily to some place where it is closer to the consumer?

Mr. TRIGGS. I don't know. I don't think you can answer this. This depends on the rate relationships between flour and wheat.

The CHAIRMAN. That is what some of the millers are worrying about, and they are attempting to answer it. They say you are going to disrupt their business where they have tremendous investments in a mill in Nebraska or Kansas, for example; that you will find the flour

being processed in Pittsburgh or in Florida. Do you see any danger of that?

Mr. TRIGGS. I think this is a perfectly legitimate complaint that they have. I think that there is going to be some disruption. There is always some disruption when technological change makes possible a rate adjustment. The only question is: Should we hold an umbrella up there for a while, while we go through the cumbersome processes of the ICC procedure?

The CHAIRMAN. Frankly, Mr. Triggs, I can't see that fear justified. I cannot see that the rate would ever be reduced to the extent that such would be feasible at all. I may be completely wrong about it.

Mr. TRIGGS. I am not sure I understand the question.

The CHAIRMAN. The question is: Are the mills going to be retained in the area where the grain is produced, or are we going to have a rate that justifies the grain being transported in bulk to other stretches of the country where it would be milled? It is just that simple.

Mr. TRIGGS. It is a simple question. I am not sure that the answer is very simple. This depends, as I say, on the rate adjustments that are made for wheat versus the rate adjustments that are made for flour. I would suspect that every change in rate affects the locational advantage that a company has, either favorably or adversely. This will help locational advantage for many millers. It will hurt others.

The CHAIRMAN. I have one other question.

Mr. YOUNGER. Would the gentleman yield right there?

The CHAIRMAN. Yes.

Mr. YOUNGER. I understand that transition has already taken place. Practically all of th flour mills have left Kansas. I saw some statistics not long ago on that. They have moved into northern cities along the Great Lakes—Minneapolis, and so on.

The CHAIRMAN. I think you would get some argument from some of the people from Kansas.

Mr. YOUNGER. No; I talked to one of the men the other day about it. They have lost pretty near all of their mills.

The CHAIRMAN. When does an agricultural product, or when does the transition become effective that an agricultural product, ceases to be agriculture and becomes something else?

Mr. TRIGGS. Up until the 1958 act was approved, this was a question that was very difficult to answer. There was, I suspect, a quite justifiable fear that the exemption was going to be broadened to cover all outdoors. This committee—and we did not disagree with the action of the committee—decided that, basically, we should freeze the exemption right where it was at that time—as the courts had left it and as the Interstate Commerce Commission had left it. I think that was a wise action. As of now, the matter is settled. Congress settled it. Sure, we disagree with some of it; other people will disagree with some other part of it. But, I think, it has been settled about as satisfactorily as anybody could achieve.

The CHAIRMAN. I sort of have that feeling myself, and so stated this morning, but you should have heard the witness testifying this morning about it. He had an entirely different viewpoint. Is there a point at which time a particular movement of agricultural products, as such, should be moved by common carrier?

Mr. TRIGGS. You are thinking in channels of commerce?

The CHAIRMAN. Yes.

Mr. TRIGGS. We don't believe so, as long as it is an agricultural product. When it becomes a manufactured product, yes; then it becomes subject to ICC regulation.

The CHAIRMAN. Isn't there a lot involved now, that actually is on the basis of it being an agricultural product, when, in fact it is a processed product?

Mr. TRIGGS. I think that there are some items in the present classification in which a very legitimate argument could be made in this respect. On the whole, I think the classification is pretty good, and pretty much right down the middle. There are also some which we feel, if the Congress were to decide to reclassify products, that we should take another look at them from the standpoint that they are classified now as manufactured products and should be agricultural products.

Let me give you an example. Sugar beet pulp; this is classified as a manufactured product. Yet, all of it is moved from a plant to a farm. It is not a type of transportation that is suitable for economic regulation. It does not lend itself to economic regulation. As a result, it has all gone to private transportation, anyway.

The CHAIRMAN. Yes, that is true. I have a feeling, however, Mr. Triggs, that there is a point in there somewhere that it would make for a much more sound transportation system if we could in some way come to a determination just where it is. The basic reason of this whole program here is to do something about the continuous encroachment of private transportation, and exempted transportation, and the gray area of transportation, and the windfall transportation. The more we make it difficult insofar as common carrier transportation is concerned on the one hand and the lack of common carrier availability on the other hand, the more private carriers we are going to have by necessity.

Mr. TRIGGS. Certainly, I do think that the big inroads on rail transportation have been private carriage and not exempt carriage. Yet I don't know how you can deal with this. Certainly a man has the right to transport his own products in his own trucks. I don't think anybody has ever come up with a proposal that has been acceptable to anybody to narrow this right.

The CHAIRMAN. I don't think you will find very, very extensive agricultural haul by the private carriage except on the very short haul to market.

Mr. TRIGGS. This is true so far as individual farmers hauling in their own trucks. In the agricultural field, the exempt carriers serve very much the same purpose as the private carrier serves in the industrial field.

Mr. ROGERS of Texas. Mr. Chairman, may I ask one more question?

Mr. Triggs, on page 2 of your statement you say:

> We would agree that no rate reductions made by carriers should be immunized from antitrust attack, including rates made by collective action, and do not construe the proposed bill to so provide.

Mr. TRIGGS. Yes, sir.

Mr. ROGERS of Texas. I presume you are talking about H.R. 4700.

Mr. TRIGGS. That is right.

Mr. ROGERS of Texas. At the bottom of page 3, the proviso, provided—

nothing contained in this section shall be construed to prohibit a common carrier from establishing in accordance with the provisions of section 5(a) of the Interstate Commerce Act reasonable through routes with other such carriers or from considering, initiating, or establishing jointly with other such carriers, the rates, fares, classifications, divisions, allowances, or charges applicable solely to such reasonable through routes.

Would you explain your position on that?

Mr. TRIGGS. We don't believe that any minimum rate established under this bill, whether by individual action of a railroad or by the action of two or more railroads, should be immunized from antitrust attack. We don't interpret this bill to immunize such rates from antitrust attack. The Department of Justice has testified to this effect, as I understand their testimony.

Mr. ROGERS of Texas. In other words, this language that I read in the proviso, you take the position that does not immunize them against antitrust attack?

Mr. TRIGGS. That is right.

Mr. ROGERS of Texas. What does it immunize them from?

Mr. TRIGGS. It immunizes them from the Interstate Commerce Commission coming in and preventing a rate reduction from going into effect which is otherwise not discriminatory and not prejudicial and immunizes them from antitrust attack because they proceeded to establish rates jointly. It does not immunize the rates as established from antitrust attack.

Mr. ROGERS of Texas. Thank you, sir.

The CHAIRMAN. Thank you very much, Mr. Triggs.

Your prepared statement will appear at this point in the record.

This concludes the hearing today, and the committee will adjourn until Tuesday, next, at 10 o'clock.

(The statement of Mr. Triggs follows:)

STATEMENT OF MATT TRIGGS, ASSISTANT LEGISLATIVE DIRECTOR, THE AMERICAN FARM BUREAU FEDERATION

We appreciate the opportunity of presenting the views of the American Farm Bureau Federation with respect to the bills under consideration by the committee.

The interest of farmers in the issues involved need not be labored. The Department of Agriculture estimates the freight bill in 1961 for rail and truck transportation of farm products was $4.3 billion. This does not include the cost of transportation of farm products by water carriers, nor local hauling, nor transportation costs paid by farmers on the products they buy.

At our most recent annual meeting the voting delegates of the member State farm bureaus adopted the following policy statement:

"The expansion of private and unregulated transportation at the expense of common carriers indicates that the rigidity of common carrier regulation is a major problem. We believe the preferable course of action is to relax such regulation so that common carriers can compete more effectively rather than to extend regulation to presently unregulated carriers.

"We favor emphasis on costs and competition as ratemaking factors. Changes in rates to reflect improved technology and equipment should go into effect without delay. Changes in rates should not be denied solely because they may adversely affect other modes of transportation. We support the principle of proposed legislation providing for the elimination of minimum rate regulation for all carriers hauling bulk or agricultural commodities. However, the Interstate Commerce Commission should have authority to suspend, and after hearing to revise, rates which the Commission considers to be unduly discriminatory, par-

ticularly to avoid such discrimination with respect to small shippers and receivers. Congress should, insofar as feasible, establish the criteria to be followed by the Commission in determining whether or not rate changes should be suspended. Such provisions of antitrust laws as are necessary to prevent predatory ratemaking practices should be extended to carriers.

"We support the present exemptions of inland waterway carriage from regulation and recommend the dry bulk exemption be extended to all such commodities without regard to other cargo. We also support the present exemptions applicable to private, cooperative, and agricultural carriage by motor vehicle."

This resolution places us in general support of the President's proposals with respect to the elimination of minimum rate regulation for common carriage of bulk and agricultural commodities. We do not necessarily subscribe to any specific language or necessarily oppose any or all revisions of such language; but do believe that it is desirable to retain the basic concept of the bill that (1) we should go in the direction of less rather than more regulation of common carrier operations and (2) that rate reductions based on improved technology should be permitted to go into effect without the lengthy delays presently encountered.

The need for modification of ratemaking policy in this respect is illustrated by the grain rate case of the Southern Railway. Southern filed tariffs reducing grain transportation rates to approximately 40 percent of previously existing rates. This reduction was made possible by improved technology in grain transportation. Yet it was over a year and a half before Southern was authorized to place the reduced rates in effect.

Another case which in our view indicates need for modification of ratemaking policy is ICC docket 33334 (1961) relating to rail transportation rates on agricultural and roadmaking machinery. The Commission disapproved the proposed reduced rates with this comment:

"While the rates resulting from the assailed ratings appear to be compensatory, and in most instances probably exceed full cost, nevertheless they are substantially below reasonable maximum levels." [Sic.]

The Commission's view was that the assailed rates were below a "reasonable maximum" because their approval would cause other modes to reduce their rates in turn which would precipitate a rate war. The logic is difficult to follow. Actually the courts reversed the Commission in this case, but this concept of holding rates up as an umbrella over competitive modes (which apparently underlies the Commission's decision) is a concept that we believe should be clearly disestablished.

It is important to recall in consideration of the proposed bill that the present prohibitions of the Interstate Commerce Act against discriminatory and preferential rates are positive, and the Commission's authority to suspend and reject such rates would be left unimpaired. These provisions of the act prohibit:

Charging some shippers more than others.

Rebates, special favors to some shippers.

Lower rates on larger shipments not warranted by cost differences.

Lower rates for some communities not warranted by cost differences.

Lower rates for some commodities than for similar commodities where not warranted by cost differences.

Lower rates to some destinations than for other destinations where not warranted by cost differences.

Much of the opposition to the proposed bill relates to whether or not the extension of specified antitrust laws to ratemaking would be effective as a means of preventing predatory rates. This is an extremely complex subject, but in general, it is our reaction that antitrust laws are an effective remedy, not so much because of any action which the Department of Justice might take, but because of the availability of the treble damage provision to any party that might be injured by predatory rate practices. Certainly any rate reductions made by railroads would be immediately examined from this point of view by the railroads' competitors and treble damage suits promptly filed if there were any color of violation of antitrust law. We would agree that no rate reductions made by carriers should be immunized from antitrust attack, including rates made by collective action, and do not construe the proposed bill to so provide.

The prohibitions of antitrust law are comprehensive. They include:

"Every person who shall monopolize or attempt to monopolize, or conspire * * * to monopolize * * * shall be deemed guilty * * *."

"Every contract, combination * * * or conspiracy, in restraint of trade * * * is hereby declared illegal * * *."

Any person who shall be injured in his business * * * by reason of anything * * * unlawful by this act, may sue therefore * * * and shall recover threefold the damages sustained by him, and the costs of the suit * * *."

"That it shall be unlawful * * * to discriminate in price * * * where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly * * *."

It is certainly not our intent to sanction predatory rates. We are of the opinion that antitrust laws specified in section 1 of the bill constitute effective protection against predatory rates. If the committee reaches a contrary conclusion, we would not be opposed to such modification of the bill as may be necessary to provide adequate protection against predatory action.

THE AGRICULTURAL EXEMPTION

It is argued that in the interest of equitable regulation between modes of transportation, we should either enact a more flexible rate policy applicable to all common carriers, or, in the alternative, extend regulation to modes of transportation now exempt from economic regulation.

It is our purpose in this section of our statement to demonstrate that the alternative, the extension of regulation to exempt transportation, would not in fact alleviate the situation with respect to railroads.

In the first place, Congress has never extended economic regulation in the field of transportation to an unregulated area without affirming the right of those presently engaged in the business to continue to be so engaged. Presumably, if the exemption were eliminated or substantially curtailed, the Congress would protect those now in the business by providing "grandfather rights." Thus, the present exempt carriers would become regulated carriers authorized to perform the same service they are now performing. How would this benefit present common carriers?

In the second place the proposal to extend regulation to the hauling of farm products by motor vehicle does nothing to improve the ability of railroads to meet their major competition, namely, private truck transportation, private and contract water carriage pipelines.

Most importantly, most of the traffic now handled by exempt carriers has such special requirements, best described by the term "flexibility," that even if the exemption were eliminated, most such traffic would continue to move by truck, mostly private and cooperative carriers.

Fortunately we are in a position to document this assertion.

In the Transportation Act of 1958 rate regulation was extended to frozen fruits and berries. If the argument that the extension of rate regulation to truck transportation of agricultural commodities would benefit railroads were correct, the railroads would have acquired a larger percentage of the carriage of frozen fruits and berries after 1958. But here is what happened:

Production and rail shipments, frozen fruits and berries

	Total pack, tons [1]	Rail freight originations, tons [2]	Percent shipped by rail		Total pack, tons [1]	Rail freight originations, tons [2]	Percent shipped by rail
1951	398,249	93,956	23.5	1957	804,416	150,520	18.7
1952	501,593	121,746	24.2	1958	679,836	145,158	21.3
1953	626,789	159,992	25.5	1959	851,072	135,069	15.8
1954	639,972	144,674	22.6	1960	807,227	136,584	16.9
1955	749,311	154,240	20.5	1961	853,962	123,477	14.4
1956	795,975	165,412	20.7				

[1] "Agricultural Statistics," USDA.
[2] "Freight Commodity Statistics," ICC.

Note that the extension of economic regulation to frozen fruits and berries shipped by motor vehicle did not result in increasing the tonnage of such products shipped by rail.

The Transportation Act of 1958 also extended regulation to truck transportation of frozen vegetables. Here is what happened:

Production and rail shipment of frozen vegetables

	Total pack, tons [1]	Rail freight originations, tons [2]	Percent shipped by rail		Total pack, tons [1]	Rail freight originations, tons [2]	Percent shipped by rail
1951	385,019	225,149	58.4	1957	683,282	365,228	53.4
1952	447,859	279,162	62.3	1958	716,622	312,147	43.5
1953	551,635	293,013	53.1	1959	813,300	331,871	40.8
1954	487,314	298,754	61.3	1960	979,310	369,619	37.7
1955	569,847	317,633	55.7	1961	1,058,020	430,383	40.7
1956	766,519	376,441	49.1				

[1] "Agricultural Statistics," USDA.
[2] "Freight Commodity Statistics," ICC.

Again, it will be noted that the extension of regulation to truck transportation of frozen vegetables did not result in any increase in the percentage hauled by rail.

The other major product for which regulation of truck transportation was extended by the 1958 act was bananas. Here is what happened with respect to the transportation of bananas.

Imports and rail shipments of bananas

	Banana imports, tons [1]	Rail freight originations, tons [2]	Percent shipped by rail		Banana imports, tons [1]	Rail freight originations, tons [2]	Percent shipped by rail
1951	2,781,150	1,038,947	37.3	1957	3,434,350	888,567	25.9
1952	2,923,300	1,021,133	34.9	1958	3,563,250	792,050	22.2
1953	3,999,800	973,898	28.6	1959	3,860,900	705,628	18.2
1954	3,269,250	974,805	29.6	1960	4,141,200	838,137	20.2
1955	3,187,600	909,998	28.5	1961	3,980,000	662,852	16.6
1956	3,380,800	918,243	27.1				

[1] "Foreign Agricultural Circular," USDA FDAP, September 1962.
[2] "Freight Commodity Statistics," ICC.

Thus, the percentage of bananas shipped by rail declined after economic regulation was extended to truck transportation of bananas.

The other major agricultural commodity the classification of which has been changed in recent years is dressed poultry. Here the change occurred in the reverse direction. Truck transportation of dressed poultry was deregulated in 1956 by judicial action. Here is what happened:

	Total production of broilers and turkeys, live weight basis [1]	Total rail shipments of dressed poultry [2]		Total production of broiler and turkeys, live weight basis [1]	Total rail shipments of dressed poultry [2]
	Tons	*Tons*		*Tons*	*Tons*
1951	1,676,500	176,937	1957	3,021,500	85,317
1952	1,842,000	183,002	1958	3,389,500	88,710
1953	1,957,500	161,531	1959	3,606,500	113,744
1954	3,198,500	112,751	1960	3,744,000	134,078
1955	2,220,000	83,393	1961	4,360,000	198,524
1956	2,764,500	86,836			

[1] Tables 28 and 30 "Poultry and Egg Situation," USDA, May 1962.
[2] "Freight Commodity Statistics," ICC.

No percentage figures have been calculated in this case because the two series of data are reported on a different basis. Here we have the odd situation that during the years when truck transportation of dressed poultry was subject to ICC regulation, the shipments by rail declined sharply. But after the court decision freeing poultry transportation by truck from ICC regulation, the shipments of dressed poultry by rail increased.

This appears to us to constitute compelling evidence that:

1. The percentage of agricultural products shipped by rail is not necessarily affected by the fact that truck transportation of such products is not regulated.

2. The argument that railroads would be benefitted by extending regulation to truck transportation of farm products is not founded on factual evidence.

3. The argument that equity between rail and truck transportation may be accomplished by extending rate regulation to agricultural products is not valid.

The importance to farmers of the exemption from economic regulation of agricultural commodities shipped by truck

It is our firm policy that the exemption from economic regulation of trucks hauling farm products is imperatively necessary to efficient marketing of farm products. In support of this position, we respectfully submit the following arguments:

A. To a major extent, the efficient marketing of farm commodities involves movement from the farm direct to consuming markets.—A major portion of cattle, hogs, and sheep move from the farm or ranch direct to packing houses. Much feeder livestock, grain, and hay moves from one farm to another farm. A substantial amount of farm produce is moved direct from farms to market or from fields to processing plants. This direct movement avoids the costs and delays involved in unloading, handling and reloading the commodities being shipped.

Exempt haulers are commonly willing and anxious to haul from farms and adapt their time schedule to that of the farmer-shipper. Truck common carriers are not ordinarily interested in loading on farms, nor do their certificates require them to do so. To require farmers to haul their products to the nearest loading facilities of rail or truck common carriers and to reload at such point would involve substantial and unnecessary costs. In some cases a deterioration in quality, in others a delay in the marketing process would prevent a farmer from "hitting the market" at the right time from the standpoint of price and salability.

B. Exempt haulers can reach any market and reach it expeditiously.—The exempt truck hauler, because it is not restricted as to routing nor delayed in terminals, can move rapidly from the point of origin to any market in any direction. This flexibility of operation is imperatively necessary to the efficient marketing of agricultural commodities, particularly perishable products. Transportation must fan out from origin in all directions in order that each market may be uniformly supplied and price depressing gluts avoided.

The fast service of exempt haulers moving in any direction to any market in response to changing prices in each market reasonably assures that each such market will be supplied with the amount of the commodity desired by consumers without oversupplying such market.

Truck or rail common carriers cannot provide this kind of service in many circumstances. Many markets can be reached from specific origins by common carriers only by circuitous routing, interchange of equipment, and delays in transit. This involves extra cost, deterioration of the product, and uneven distribution.

C. Common carriers do not serve many agricultural communities.—In many cases it will be a substantial distance from a farm or even from a local assembly or processing plant to a common carrier rail or truck terminal that is equipped to handle specific farm products. Common carriers, both truck and rail, pass through many rural communities without any intention and without facilities to to serve such communities. The exemption insures that an agricultural area, no matter how thin its transportation needs may be, will be served. It further assures that competitive factors will provide an incentive to satisfactory service. Otherwise, in many instances farmers would be dependent upon one railroad or one truck line irrespective of the adequacy or efficiency of their service or the remoteness of loading facilities suitable for handling their products or the inability of such carrier to reach markets the farmer wants to reach.

D. Exempt haulers commonly provide a fast, superior, and personalized service.—Exempt haulers are normally local residents known to the farmer-shipper in whom the farmer-shipper has trust and confidence. We are of course aware of the aspersions often cast upon "irresponsible gypsies." While there may be such, they are in the minority and no farmer-shipper is required to deal with

them. Most of the exempt haulers are high caliber, responsible individuals, small businessmen, competing vigorously for business by providing service. Because the farmer-shipper is dealing with an individual who can give the cargo personal attention all the way to the market, he can give him instructions with respect to the manner in which service is to be provided and hold him responsible for such service.

No such personalized service can be assured in many circumstances by a common carrier organization. The shipper's instructions do not necessarily filter down to the person or persons doing the work. This is particularly the case where interchange of equipment or responsibility is involved.

E. Exempt haulers provide a transportation pool.—Much agricultural movement is seasonal. Shipments from an area may fluctuate from nothing to many truckloads in a few days. The freedom of entry into exempt haulage means that trucks normally engaged in other occupations or in adjoining areas may be pressed into service to meet seasonal or emergency situations. The freedom from rate regulation means that rates may rise to the extent necessary to attract the needed number of trucks into service.

In many situations, common carriers do not begin to have the standby equipment necessary to meet seasonal peaks, which in the case of fruits and vegetables for fresh market or canning, are often only a week or two.

F. Exempt haulers will load or unload at multiple points.—Common carriers do not ordinarily provide this service. This is often an extremely important factor in serving an area or in developing a new area. Exempt haulers in many instances perform a marketing function as well as a transportation function.

G. Exempt haulers are not as subject to featherbedding and makework practices that add costs to rail and truck common carriers.—An example of this is the local driver requirement established in a number of cities by an agreement between common carriers and the local Teamsters' Union which provides that an over-the-road truck must be accompanied by a local union man from the common carrier terminal to the ultimate destination. The exempt hauler is not subject to such contractual arrangements and can often avoid the costs incident to such uneconomic practices.

H. The exemption widens the shipper's choice of alternative shipping facilities.—The availability of the exempt hauler to serve farmers permits the farmer-shipper to choose the transportation facility best equipped for a specific movement and therefore to market his product to best advantage.

I. In many instances, rates of exempt haulers are substantially lower than common carrier rates.—The real significance of the exemption is that rates are free to fluctuate depending on relative need and the character of service required. In many instances exempt rates will exceed regulated rates. However, as a general rule exempt rates will be lower than regulated rates.

In "Interstate Trucking of Fresh and Frozen Poultry Under Agricultural Exemption," Marketing Research Report No. 224, the Department of Agriculture points out that truck rates charged by carriers during 1956 and 1957 (after poultry was deregulated by judicial action) were approximately 33 percent below the 1952 rates. This is a high price to pay for regulation.

Furthermore, most shippers reported that service provided by exempt haulers was superior to that provided by common carriers. The reasons advanced for this were faster service, availability of equipment, willingness to serve out-of-way points, willingness to serve distant markets, direct service to markets, more stopoffs permitted, willingness to adapt service to processor and customer needs, deliveries arrive at markets at designated time, and reliability of the drivers.

In another publication issued by the Department of Agriculture in March 1959 titled "Interstate Trucking of Frozen Fruits and Vegetables Under Agricultural Exemption," Marketing Research Report No. 316, appears the following summary: "Since the interstate trucking of frozen fruits and vegetables came under the agricultural exemption in 1956, motor carrier rates have been reduced, and, according to the processors, service has improved." The report further states that "Motor carrier freight rates on frozen fruits and vegetables declined 19 percent following the court decisions declaring them to be 'exempt commodities' between 1955 and 1957."

J. The elimination of the agricultural exemption would impose an impossible regulatory burden on the Interstate Commerce Commission.—The Interstate Commerce Commission is currently regulating about 17,000 truck common and contract carriers, but there are literally tens of thousands—no one knows how many—exempt haulers. It would be a herculean task to bring all of these

additional concerns and individuals under economic regulation. How would rates be established? Who would establish them? How can you establish rates from farms to markets or from farm to farm? The complications of ratemaking would be multiplied beyond anything in current experience.

K. Rate regulation of truck transportation of farm products is impractical.—Most transportation service for industrial products is standardized as to the character of the service provided. This is not true with respect to much of the carriage of farm products by motor carrier. The character of the service is diverse and therefore not adaptable to fixed-rate practices. A few examples will suffice to illustrate this.

In one case, the farmer or his employees aid in loading a truck; in another, the trucker does all the loading.

In one case, the farmer has loading platforms and loading facilities; in another, he does not.

In one case, loading at night may be necessary to reach the market at a specified time; in others, loading at any time may be acceptable.

In one case, loading is at a central point; in another, the product is picked up at various points in one or more fields.

In one case, the farm is located on a major highway; another farm may be located off major highways over rough and narrow roads.

In one case, the cargo may constitute a full load; in another, a partial load.

In one case, a full load may be picked up on one farm; in another, the trucker may pick up partial loads on a number of different farms.

In one case, unloading labor and facilities are provided at destination; in another, such labor and facilities may not be provided.

In one case, fast service and delivery at a specified time may be essential; in the next instance, this may not be necessary.

In one case, the trucker may be asked to assume a marketing responsibility; in another, this will not be requested.

In one case, overnight stops by the trucker may be necessary; in another, the round trip may be completed in 1 day.

These and other variations in the character of the service needed by farmers necessitate rate determination by negotiation rather than by regulation. Regulated rates simply will not fit the varied nature of the transportation service required.

The bulk commodity exemption

As part of the alternative proposal to equalize regulation between the various modes, it is argued that rate regulation should be extended to transportation of liquid and dry bulk commodities by inland water carriers.

It is submitted that such enactment would not improve the competitive position of railroads, but would have substantial adverse effect on the public interest.

There is no more reason to regulate rates charged by inland water carriers than there is to regulate the prices of automobiles or sewing machines.

The three reasons commonly asserted to warrant rate regulation are (1) to protect the public against unduly high rates, (2) to protect other carriers against unduly low rates, and (3) to protect both shippers and other carriers against discriminatory rates.

There is no likelihood that excessive rates will be charged by water carriers, because competition and private water carriage enforces an effective ceiling.

That there is no evidenced need for minimum rate regulation is indicated by the fact that the ratio of net income before income taxes to capital and surplus of carriers by water reporting to ICC was 11.7 percent (Transport Statistics in the United States, 1961, Pt. 5, ICC).

There is no need for regulation to prevent discrimination since there is a sufficient number of competitive carriers that a shipper disappointed with the treatment accorded him by one carrier can find other carriers to provide him with the desired service.

In brief, none of the elements commonly asserted to warrant rate regulation are applicable to the inland waterway transportation of bulk commodities.

It should also be noted that most inland water carriers are either private carriers, or are for-hire carriers whose operations are more akin to contract carriage than common carriage. Most rates of for-hire carriers are fixed by negotiations between shippers and carriers within a narrow range limited at the top by private carrier costs and competitive factors. However, economic regulation

would impose on water carriers two important restrictions on the efficiency of operations: (1) it would presumably limit carriers to the commodities, routes, and points they have served in the past; and (2) it would presumably prohibit private carriers from return trip hauling on a for-hire basis. We do not believe the public interest is served nor the longrun interests of carriers served by regulation-imposed restrictions on efficiency of operation.

Thank you for the opportunity to present our views on the issues before the committee.

(Whereupon, at 5:45 p.m., the committee recessed to reconvene on Tuesday, May 7, 1963, at 10 a.m.)

TRANSPORTATION ACT, 1963

TUESDAY, MAY 7, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order. We are resuming the hearings on H.R. 4700 and H.R. 4701 on the proposed transportation legislation.

The first witness this morning will be Mr. Stuart G. Tipton, president of the Air Transport Association.

STATEMENT OF STUART G. TIPTON, PRESIDENT OF THE AIR TRANSPORT ASSOCIATION OF AMERICA

Mr. TIPTON. Mr. Chairman and gentlemen, my name is Stuart G. Tipton. I am President of the Air Transport Association of America, which is made up of virtually all of the certificated scheduled airlines of the United States.

Mr. Chairman, I have quite a comprehensive statement here which fully argues all the issues we want to raise before the committee.

However, I note that there are quite a number of witnesses on today. If it is satisfactory with you and with the committee, I will read three introductory paragraphs and summarize the remainder of my statement as briefly as I can.

The CHAIRMAN. You may do so, Mr. Tipton and your entire statement will be included in the record.

Mr. TIPTON. Thank you.

These two bills, H.R. 4700 and H.R. 4701 appear to have been drafted to attack certain problems in surface transportation, largely by establishing equality of regulatory treatment for rail, motor, and water carriers.

The provisions relating to the air carriers were apparently inserted as an incident to the equality theory rather than as a deliberate response to the need of air transportation.

The result is equality in form only, a symmetry on paper which is achieved by ignoring basic substantive differences between air transportation and surface transportation.

Proposals geared to surface transportation are applied to air transportation without differentiating the characteristics and the problems of the respective transport media.

By thus concentrating on surface transport problems that do not exist in air transportation or that take very different forms in air transportation, many sections of the bill would create new and serious problems for the air transport industry in the future.

The best that can be said for the other sections is that they would have uncertain conditions for air transportation because of ambiguities and uncertainties as to what their practical impacts on air transportation would be or indeed, what the draftsmen think those impacts would be.

The scheduled airlines oppose this indiscriminate, broad-brush approach. We recommend that the provisions directed to air transportation be dropped so that the bills may be considered for what they essentially are—surface transportation bills.

Now, I would like to summarize very briefly some more specific comments on the bills which tend to illustrate our point.

The elimination of minimum rate regulations with respect to bulk commodities, agricultural, horticulture, and fishery producers in the air transportation industry.

Here we have a good example of how a single principle applicable to deal with what is apparently a serious problem in surface transportation, was applied to air transportation, when we have no problem to deal with.

Bulk commodities which are sometimes described as commodities which can be scooped, shoveled, or poured, are not presently susceptible, as, of course, the committee well knows, to shipment in air transportation.

We don't move that kind of cargo. Consequently, it would be most unwise to try to take legislative action with respect to ratemaking on commodities that we do not now transport and I would guess within our lifetime we will not handle any significant amounts.

As far as agricultural, horticultural, and fishery products, the situation is much the same. We do haul some commodities falling within that classification, flowers, lobsters, chickens, tropical fish, racehorses, very specialized transportation jobs that air transport does, but that is a very modest percentage of the total cargo haul.

Also, those commodities, in our case, require for the most part, very special handling and they receive a very special value from air transportation. They are premium rated products. The problem is not one of dealing with minimum rates.

Also, in our case, we are not facing unregulated competition in that field nor competition between different modes of transportation. This is all competition between air carriers we are dealing with.

So, any elimination of the minimum rate power for us would lead, for a very small part of our transportation, to a possible pointless and uneconomic rate war.

There is no problem now. The legislation would create a problem.

In the course of writing the minimum rate elimination legislation, international air transportation has sort of been caught by the back of the draftsman's hand.

As the committee knows, along with the elimination of minimum rate regulation, it is proposed to eliminate the exemptions from antitrust laws which appear in the transportation acts, also in the Civil Aeronautics Act.

In writing in respect to air transportation, it was provided in effect that there could be no antitrust exemption with respect to the commodities referred to; that is, bulk commodities, agricultural, horticultural, and fisheries products.

Now at the present time, the basic method of regulating rates in the international field arises out of the operation of the International Air Transport Association with which the committee is familiar.

I testified last year before the committee extensively on that subject. This legislation before us, which was not, as we understood it, supposed to deal with foreign transportation at all, would eliminate the possibility of using the normal methods of rate regulation in the international air field with respect to the class of products referred to.

We believe that is an inadvertence but it does indicate that by attempting to put down on air transportation principles that seem wise with respect to surface transportation leads to unexpected and adverse results.

Regulations of minimum passenger fares; here the administration and the President in his transportation report and this legislation do not propose to eliminate minimum rate regulations with respect to air transport passengers.

With that, of course, we completely agree. However, the legislation proposes a sort of strange half step in that direction in which the amendment is proposed which would say that while the Civil Aeronautics Board retains its minimum rate control, its exercise should be reduced to the greatest extent consistent with the public interest.

That rather vague amendment we oppose because it departs from the well-established statutory language that has governed the operation of the minimum rate power of regulatory agencies for a long time, has been tested endlessly in the courts and we have a good idea at least of what it means.

It introduces into minimum passenger rate regulations a new element which is unknown, which would be difficult for the Civil Aeronautics Board to administer and which would be difficult for us to understand.

Consequently, we would hope that the committee would not adopt that amendment.

Also, I think the committee in considering this, should also consider the great care with which the Civil Aeronautics Board has administered minimum rate regulation.

I do not believe that anyone could say, considering the wide variety of passenger rates in the air transport industry, the many problems that are going on in the passenger rate field, that the Board has unduly exercised its minimum rate power.

We do not believe, in other words, that the new language proposed by the administration is in any respect necessary. We believe it is vague, it would cause difficulty, and it is not necessary.

Now, experimentation. The experimentation section is applied to our industry—as you know, it says it is designed to test new surface combinations or arrangements, simplify documentation and plans for different or simplified rate basis and freight classifications.

Here again, we do not believe that that has any applicability to air transportation because this committee, when it originally wrote the Civil Aeronautics Act, when it reenacted it in 1958, has always

included in that act as part of the policy statement that the Civil Aeronautics Board under the act, should take into account the necessity for the promotion and development of air transportation and under that a very wide variety of experimentation has always gone on.

The Board action in creating all cargo carriers, local service carriers, major examples of experimentation there, the present through-service between air and truck that is being carried out at the present time and is rapidly expanding, other examples of experimentation are in the passenger field.

We have too many experiments going on to actually list for the committee, many different types of efforts to expand our passenger business.

There is no necessity for creating new legislation to promote experimentation in the air transport field. Here again, I think the legislation must be basically directed to surface transportation and there may be some need in surface transportation to expand experimentation and there may not, I don't know, but surely there is not any necessity to do so in the present Federal Aviation Act.

The provisions dealing with through-service and joint boards: at the present time, the Federal Aviation Act contains a provision for the establishment of joint boards between the Civil Aeronautics Board and the Interstate Commerce Commission, to deal with questions arising out of through-service and joint rates between other carriers and air carriers.

That provision has been in there since the beginning, since 1938. It is clearly adequate to deal with the through-service and joint rate problems arising in the air transport field.

Actually, there has not been any need for the joint boards up to the present time. I would guess that with the expansion of the air-truck operation, there may in the future be a need for convening joint boards.

If there is such a need, the statute is there and it is adequate to deal with the problem. So, here again, there is no necessity for new legislation to deal with air transport problems here.

On the question of reparations in the legislation, it is proposed to impose on air transportation virtually the same reparation provisions as are imposed on the railroads in the Transportation Act.

Here again, an action which it seems to us is not in any respect necessary. Reparations is basically a freight problem and always has been a freight problem.

In our business, which, in terms of revenue, is 90 percent passenger, we do not have, and our customers do not have, a reparations problem.

Looking at it from the two standpoints; one, overcharges: in the case of overcharges, if we overcharge someone—and it happens by mistake on occasion—they are entitled to get this money back; they are entitled to get it back from us; they are entitled to sue for it and there is no doubt about it, there is no problem there.

In the case of reparations actions, questioning the reasonableness of rates in the passenger field, that has never been a problem, even in surface transportation to the best of my knowledge. It has never been a problem in air transportation.

As far as our rate business is concerned, here again, it is not in any respect necessary to enact reparations legislation for our freight business because the problem in our freight business is not excessively high rates which impose burdens upon the shipper.

The problem in freight is to set our rates at a low enough level so that we can develop a business and at the same time cover our marginal cost.

That is the problem. No shipper, I am sure, would be interested in causing an inquiry into a specific freight rate in the air transport field for fear, instead of getting a finding that the rate was too high, he is likely to get a finding that it was too low.

That is the current state of our business. Hopefully, we will have large enough freight business in the future where the freight can carry its full load, but that is not in any respect the case at the present time.

So that here again, the imposition of reparations on airlines would be to create additional regulations for airlines and to anticipate a problem which is not with us.

The simplification of Government rates and procurement—several sections in H.R. 4701. We are not clear in this one as to whether it is designed to cover air transportation or not. On the one hand, the specific language seems to say that it covers only carriers subject to the Transportation Act.

However, when Secretary Hodges presented it he said that it covered all modes of transportation. So, I will comment briefly on it.

The great difficulty with this set of provisions is that it appears to give Government agencies an opportunity outside the regulatory system to set up rate structures for themselves, rate structures that will apply to Government traffic that will not be applied to the public generally.

Now air transportation has had quite a bit of experience with permitting the U.S. Government, the biggest shipper in the world, a great deal of flexibility to drive rates down.

That is what caused the Civil Aeronautics Act to be passed in the first place, actually. The Post Office Department was in a position to get bids for transportation of mail and drive the rates down to the point where the carriers were bidding virtually nothing and the industry was very nearly destroyed.

Again, many years later the Department of Defense by reason of the fact that certain Government traffic was exempt from regulations by the Civil Aeronautics Board, the Department of Defense achieved the same result that the Post Office Department had by driving rates on military traffic down to the point where the carriers that were moving it were in great difficulty.

Both the Civil Aeronautics Board and the Defense Department became so concerned about it that those exemptions were eliminated and those rates are now regulated.

We would hope that this committee would not countenance any such deviation from regulatory policy again.

As far as the title of the provision is concerned in which it speaks of simplification of transportation, I think the airlines have done a good job in the freight part of their business in seeking to keep it simple.

We have a standard air bill which we have had ever since 1946.

We have a pickup and delivery system that is as uniform as we can get it.

We have a consolidated tariff in which all airline freight rates are in the same volume so that they can be identified and used by shippers. We have made good progress along that line so that I don't believe here again, that we need any legislation authorizing us to take action to simplify things.

We don't have any legal problem there. W ecan simplify them all we want to. It is obvious in our record that we do want to simplify it.

So that, in conclusion, Mr. Chairman, let me emphasize our request to the committee that air transportation in, effect, be deleted from this legislation, that the really difficult problems of surface transportation that are dealt with here, be concentrated on and we will retire to the wings.

Thank you, Mr. Chairman.

(The complete formal statement follows:)

STATEMENT OF STUART G. TIPTON, PRESIDENT OF THE AIR TRANSPORT ASSOCIATION OF AMERICA

My name is Stuart G. Tipton. I am president of the Air Transport Association of America, which is made up of virtually all of the certificated scheduled airlines of the United States. Our membership includes the domestic trunklines, local service airlines, all-cargo airlines, helicopter carriers, airlines operating within and to Hawaii and Alaska and U.S.-flag airlines operating internationally.

We appreciate this opportunity to appear before the committee to set forth the views of our industry on the two bills, H.R. 4700 and H.R. 4701.

The basic position of the air transport industry may be briefly summarized:

These two bills appear to have been drafted to attack certain problems in surface transportation, largely by establishing equality of regulatory treatment for rail, motor, and water carriers. The provisions relating to air carriers were apparently inserted as an incident to the equality theory, rather than a deliberate response to the needs of air transportation.

The result is equality of form only—a symmetry on paper, which is achieved by ignoring basic substantive differences between air transportation and surface transportation. Proposals geared to surface transportation are applied to air transportation without differentiating the characteristics and the problems of the respective transport media. By thus concentrating on surface transport problems that do not exist in air transportation, or that take very different forms in air transportation, many sections of the bills would create new and serious problems for the air transport industry in the future. The best that can be said for other sections is that they would have uncertain consequences for air transportation, because of the ambiguities and uncertainties as to what their practical impacts on air transportation would be—or indeed, what the draftsmen think those impacts would be.

The scheduled airlines oppose this indiscriminate, broad-brush approach. We recommend that the provisions directed to air transportation be dropped so that the bills can be considered as what they essentially are—surface transportation bills.

We believe that the soundness of this recommendation will be demonstrated by our discussion of the various issues raised by these bills as they appear to involve air transportation.

1. Minimum rate deregulation of bulk commodities and agricultural products (H.R. 4700)

H.R. 4700 would eliminate the powers of the Interstate Commerce Commission and of the Civil Aeronautics Board to prescribe minimum rates for the carriage of bulk commodities and for the carriage of agricultural, horticultural, and fisheries products. With respect to these commodities and products, the regulatory agencies would continue to have the power to prescribe maximum rates, or to proscribe discriminatory rates; they could not, however, establish minimum rates.

This might seem, on paper, to establish equality of regulatory treatment. On analysis, however, it is a most graphic example of how these bills tackle a very real surface transportation problem—and then append the surface transport solution to air transportation, whether or not it fits, in order to achieve the appearance of equality.

Taking, first, the surface carrier problem. Bulk commodities and agricultural products are said to account for 70 percent of rail freight traffic. As to this substantial block of traffic, the railroads face extensive nonregulated competition from other surface transport media. Water carriers—bargelines—are exempt from certificate or rate regulation as to bulk commodities, such as coal, iron ore, and grain. The agricultural exemption in section 203(b)(6) of the Interstate Commerce Act permits widespread nonregulated carriage by motor truck of agricultural products. Minimum rate regulation as to these commodities may well place the regulated common carrier at a competitive disadvantage with respect to his unregulated competitor. At the same time, an ICC minimum rate order with respect to a railroad rate, or the rate of a common carrier trucker, may well have a substantial impact on the distribution of traffic between these common carrier surface transport modes.

One solution of this surface carrier problem is the proposed deregulation of minimum rates for bulk commodities and agricultural products. On the basis of long, practical experience in the field, the Chairman of the Interstate Commerce Commission, in his testimony on the similar bill last session, has suggested to you that it would be an unhappy solution. In fact, he flatly termed the proposal a backward step and an open invitation to destructive rate wars. As an alternative, he recommended repeal of the bulk commodities exemption in section 303(b) of the Interstate Commerce Act, and limitation of the agricultural exemption in section 203(b)(6) of the act.

It is not for us to debate the merits of these various suggested solutions to these surface transportation problems. But, when it is proposed that the same solution be engrafted on air transportation as well, it is incumbent upon us to speak. In air transportation the problem takes on entirely different dimensions, both in terms of traffic volume and nature of competition. In sum, the problem disappears. In the absence of the problem, there can be no apparent need or useful purpose for deregulation at this time.

Bulk commodities—sometimes defined as things that can be "scooped, shoveled, or poured"—are not presently susceptible to commercial air transportation. If and when it becomes practicable to scoop, shovel, and pour bulk commodities into commercial aircraft, there may or may not be a minimum rate problem. It would be unwise to legislate now for an unknown future situation.

So far as agricultural, horticultural and fisheries products are concerned, there are some items—flowers, lobster, baby chicks, tropical fish, racehorses—which are shipped by air. To the extent these items move by air, the problem presented differs sharply from agricultural shipments by surface media for at least three important reasons:

1. Agricultural, horticultural and fishery products constitute a very small proportion of total air freight shipments. They are significant in a few air carrier markets, primarily where carriage of these items may alleviate directional imbalance of air freight.

2. Those agricultural, horticultural and fishery products which move by air require special handling, and receive special value from air transportation. They should accordingly be expected to pay premium rates.

3. Air transportation of these commodities does not present the problems of nonregulated competition, and competition between different modes of transportation, which characterize the carriage of these commodities by surface modes. The air competition is essentially between regulated air carriers.

Because of these three characteristics, action to strip the Civil Aeronautics Board of minimum rate controls over agricultural, horticultural and fishery products could well lead to a pointless and uneconomic rate war. It would be a rate war strictly between regulated air carriers, involving a relatively few items capable of paying premium rates, which instead would be subsidized by the bulk of air freight shipments.

It would, in our view, be unreasonable to leave the Board powerless to deal with uneconomically low rates for these items while still requiring it—as to all other air freight movements—to regulate rates in accordance with the congressional mandate to foster sound economic conditions in air transportation.

Nor is it any answer to say that under H.R. 4700 the remedy for a competitively destructive rate would be the antitrust laws.

In the first place, the antitrust laws would not necessarily reach an uneconomically low rate. The antitrust laws would come into play only if it could be shown that there was either (a) concerted action by the carriers to fix a rate, or (b) unilateral action by a single carrier to monopolize or attempt to monopolize.

Secondly, even as to a predatory rate within the ambit of the antitrust laws, the bill would substitute lawsuits brought by the Department of Justice, or by private boards, for the Board as the regulatory medium. The bill thus contemplates about as costly and cumbersome a procedure for dealing with predatory rates as can be imagined. This is particularly so since the antitrust remedies, for practical purposes, operate only after the fact, whereas the Board's powers can also operate prospectively, and prevent an unlawful rate from ever going into effect, as well as striking it down afterward.

It seems clear to us that, so far as the question is coping with the level of rates in air transportation of bulk and agricultural commodities, the regulatory controls in the Federal Aviation Act are considerably superior to the proposals of H.R. 4700.

Before leaving this subject, however, I should like to point out that a further unsound feautre of H.R. 4700 is its impact on the rates for carriage of these commodities between the United States and foreign countries. Here the bill is clearly—and perhaps inadvertently—detructive.

Since sections 5(a) and 5(b) of H.R. 4700 are framed as an amendment and amplification of section 1002(d) of the Federal Aviation Act, which in turn applies only to interstate and oversea air transportation, it is evident that H.R. 4700 is not intended to affect foreign air transportation. However, there is apparent danger in section 5(c), the proposed amendment to section 414, in this regard. Since section 414 encompasses foreign air transportation, the exclusion of agreements concerning "any commodity referred to in section 1002(d)(2) of this act" could be construed to apply to foreign air transportation in this limited area.

If so, the bill would foreclose interline agreements "with respect to any rate" for bulk and agricultural commodities shipped by air between the United States and foreign countries. As to such traffic, the ratemaking machinery of the International Air Transport Association could not function. In June 1962 I had occasion to review the IATA ratemaking procedures, the forces that brought it into being, and the reasons it is essential, in testimony before the Transportation and Aeronautics Subcommittee of this committee on H.R. 10655, H.R. 10657, and H.R. 7309. Rather than repeat such detail, I am submitting excerpts from that testimony as appendix A to today's testimony.

As I pointed out in my testimony last year, the conclusion was reached by our Government in 1946 that the basic machinery for international ratemaking should be a conference of carriers to work out the detailed rate schedules for submission by each member carrier to its respective government for approval. This position was reaffirmed by the President last month in a statement on U.S. international air transport policy. In this statement, the President asserted that "this (IATA) multilateral mechanism, though it has some drawbacks, seems to be the most practical one we can achieve, and it should be maintained."

The impact of the proposed section 414 amendment on foreign air transportation is apparently another instance where concentration on domestic surface transport problems has been accompanied by failure to focus on air transport problems. Absent IATA, there is no international ratemaking or rateregulating machinery. Absent IATA, foreign governments might well take unilateral measures in the rate field. Factors as elemental as these have clearly been overlooked in drafting the bill to extend to air transportation the proposed approach to bulk and agricultural commodity rates for surface transportation.

For such reasons, we oppose the proposed minimum rate deregulation of bulk and agricultural commodities in air transportation, as proposed in H.R. 4700.

2. Regulation of minimum passenger fares (H.R. 4700)

Now I would like to talk briefly about the other area of deregulation covered by this bill: namely, passenger fares. Section 5(d) of H.R. 4700 would express the "intent" of Congress that minimum rate control over air passenger fares be "reduced to the greatest extent consistent with the public interest." This admonition to the Board to use its minimum rate powers sparingly with respect

to passenger fares is entirely different from the proposal that minimum fare regulation be eliminated in surface transportation. The administration explains the difference as "recognition of the need to proceed more gradually in the deregulation of passenger fares in air transportation."

The administration's caution here is well founded. Frankly, we do not believe that minimum passenger fare deregulation would be a wise program for the air transport industry at this time. You are all aware of our industry's depressed earnings in some recent years. Early jet-age operations have been characterized by overcapacity and predominantly low-load factors. These are conditions that would invite uneconomic rate wars if minimum fare regulation were eliminated.

Perhaps the establishment of uneconomically low fares is not an ominous threat in surface transportation. But there is a significant factor which should not be overlooked. The airline business is far more vigorously competitive than any other single mode. Over two-thirds of the domestic passengers carried by the certificated airlines in 1961 moved between city pairs served by four or more air carriers. The competition between airlines for that rich nucleus of our passenger revenue is fierce; minimum fare deregulation is not needed to stimulate it.

Apparently, the administration is aware of these characteristics of the air transport industry, for it has not urged air passenger fare deregulation. But the draftsmen of the bill have taken a strange half-step in that direction. Section 5(d) attempts to straddle the issue, and have minimum passenger fares both regulated and deregulated. This is unsound. The administration recognizes the continued necessity of the Board having minimum fare regulatory powers, and continues the specific statutory standards that govern the Board's actions in this area. Yet, the bill then superimposes a vague "escape hatch" which says that it is the "intent" of Congress that in some undefined cases the Board may ignore the statutory standards. The proposed expression of intent thus may be meaningless, or may be read in different cases with many different shades of meaning, and so imports into passenger fare cases a quixotic element of unknown application. Moreover, it ignores the simple fact that the Board has shown no predilection for blanket invocation of minimum fare controls, but examines each tariff filing on its merits and, whether one does or does not agree with particular decisions, attempts to reach a sound decision.

The air transport industry supports the conclusion that air passenger fare deregulation of minimums is unwise at this time. For that very reason, we also oppose the half-step proposed in section 5(d) of H.R. 4700.

3. Experimentation under section 2 of H.R. 4701

The stated purpose of this section is "to test new service combinations or arrangements, simplified documentation, and plans for different or simpliled rate bases and freight classifications." To that end, the ICC, CAB, and FMC would be empowered to authorize experiments by one or more common carriers, intramode or intermode, subject to the control and supervision of the regulatory agency or agencies concerned. The experiments may be proposed by carriers, shippers, or regulatory agencies. Participation by shippers or common carriers is to be voluntary. A saving clause further provides that this section shall not be deemed to diminish the existing regulatory powers of the three agencies concerned.

The section is objectionable in providing that the contemplated experiments may be authorized, with no standards and no requirements that the agency find the proposed experiment would be in the public interest, or serve the public convenience and necessity, or meet any other yardstick. In other words, the section might be construed as empowering the agency to approve anything that the applicant labeled "experiment."

The absence of any standards for determining what experiments should be approved, and what should not be approved, is the more troublesome because of ambiguity as to the scope of the projected experimental field. Thus, the caption of this section refers to "experiments * * * in rate classification and documentation systems." In transportation law, the term "rate" normally refers to cargo, as distinct from the term "fare" which refers to passengers. The phraseology of the caption would, therefore, seem to indicate that the experimentation contemplated is confined to the freight rate field—a conclusion seemingly borne out by references, in the text of the section, to shippers, but not to passengers. But the text uses such terms as "new service combinations or arrangements," which might be read as meaning almost anything.

Most of the detailed testimony of Government witnesses has dealt in freight matters. But there are just enough passing references to experimental passenger fares to leave considerable room for speculation as to what service combinations or arrangements might ultimately be construed to mean.

In our view, no useful purpose would be served by a fresh congressional mandate to the Civil Aeronautics Board to encourage "experimentation" in air transportation. The Federal Aviation Act includes a farsighted statement of congressional policy which makes promotion and development important among the considerations which the Board must apply in determining the public interest and the public convenience and necessity. The Board has been alert, over the years, to the desirability of encouraging and authorizing experiments which appear likely to contribute to the promotional and developmental objectives of the act.

At the time the all cargo and local service certificate awards were made, a recognized consideration was that the operations involved experiment. Air-truck authorizations are a good example of intermode experimentation by airlines with Board approval. In the passenger fare field, experiments are legion. At the moment, several carriers are experimenting with reduced fares for furloughed servicemen on a "space available" basis, and various experiments are being conducted, both domestically and internationally, with special fares for groups. Other current or recent examples include "bus-out, buzz-back," youth, commuter, business, and golden age fares, shuttle, no-reservation and air-bus services. Indeed, there has been some criticism, particularly from the travel agents, that there are too many current experiments. It is sometimes alleged that the point has been reached where choosing between the variegated fares between a given pair of points is an exercise in confusion.

We have reason to believe that the experimentation section is, again, basically directed to surface transportation. It is said to have been prompted by difficulties with certain complex and unwieldy railroad and motor-carrier freight tariff structures. The primary goal is purportedly the simplification of documentation. The objective is tariffs which offer freight services and quote their rates more simply; i.e., there should be a smaller number of broader groupings. The airlines, we believe, have already gone far down that road. Indeed, it has been suggested that the real aim of this section is rate and documentation simplification by surface carriers to the degree already experienced in the air transportation field.

Experimentation in air transportation has thrived under the present provisions of the Federal Aviation Act. It has done so under standards which encourage soundly conceived experiments, but recognize that a proposal is not necessarily good just because labeled "experiment." The air transport industry urges you not to alter that successful feature of the Federal Aviation Act. We oppose the experimentation section of the bill insofar as it is directed to the CAB.

4. Through service and joint boards (H.R. 4701, section 4).

Section 4 of H.R. 4701 declares that it is in the national interest to encourage and promote the establishment of through service and joint rates, fares, and charges between carriers of all modes of transport. It then provides certain machinery through which the declaration may be implemented. This involves joint boards, comprised of representatives of the CAB, the ICC, and the Federal Maritime Commission. The vehicle used is the Federal Aviation Act of 1958, in which the present relatively simple section 1003 would be replaced by an elaborate new section.

The Federal Aviation Act, section 1003, now provides for the establishment of joint boards to deal with through services and joint rates between air carriers and other common carriers. We believe that this statutory provision affords all necessary authority in the field of joint services and rates between the airlines and surface carriers. We have a good many joint air-truck arrangements. The statute is adequate for joint air-rail services, although there has been little call for this since the period in the early 1930's when transcontinental passengers flew by day, and took a pullman at night. To the extent that failure to mention the Federal Maritime Commission in the present section 1003 might raise a question as to joint air-water services or rates, we would observe: First, there is no substantial call for the joint service/rates involving air and water carriers. Second, even if there were, any demonstrable need could be satisfied by a simple amendment to the Aviation Act.

There is no known need, or even plausible justification for the elaborate joint boards and rates provision which section 4 of the bill would write into the

Federal Aviation Act. So far as we are aware, the only jurisdictional problem has been in surface transportation, largely involving Alaska. This was apparently resolved by the enactment of Public Law 87-595, August 24, 1962. This act brings certain deep water carriers under ICC jurisdiction and permits them to file through routes and joint rates, respecting Alaska and Hawaii service, with ICC, thus eliminating the necessity for joint boards to deal with through service by the different classes of surface carriers serving this trade. This having been accomplished, it would seem appropriate either to strike section 4 of H.R. 4701 as moot or to pass a brief amendment to section 1003 of the Federal Aviation Act so that the Federal Maritime Commission will also be cited therein.

5. Reparations (H.R. 4701, sections 7 and 8)

H.R. 4701 does not deal with air transportation again until we reach the "reparations" provisions of sections 7 and 8. These would engraft on the Federal Aviation Act provisions for reparations to passengers or shippers for unreasonably high or otherwise unlawful fares or charges—even though in conformity with the filed tariff—as well as for "overcharges" in contravention of the tariff. Such reparations could be sought either by court action, or by complaint to the Board, at the passengers' or shippers' option.

The genesis of the proposal appears, again, to be "symmetry" with surface transportation. The railroads are now subject to reparations, but motor carriers—under a 1959 Supreme Court decision—are not. Pending is a bill, S. 678, which would subject motor carriers to reparations. Apparently the draftsmen of H.R. 4701 merely sought to pick up air transportation at the same time.

We are aware of no significant difficulties in air transportation due to the nonavailability of reparations. Let me take it in two bites (1) overcharges and (2) excessive tariff rates or fares.

As to overcharges: these occur when the sales agent misreads the tariff rate or fare, or adds them wrongly. If the airline discovers the error, it is obligated, under present law, to make a refund; likewise, if the error is brought to the carrier's attention by the passenger.

Excessive fares and rates have not been the problem in air transportation. Nor are they likely to be a problem, in view of the intense competition between the airlines, and the Civil Aeronautics Board's traditional careful screening of tariff filings before permitting them to become effective. There is, accordingly, simply no likelihood of unreasonably high or discriminatory rates to justify giving this extraordinary power. This is particularly true in the freight field, where airlines must keep rates at a reasonable level in order to develop the air-freight market. It is extremely doubtful that the present airline freight rate level could be successfully challenged as unreasonably high. On the other hand, there is danger in the possibility that, in isolated instances—particularly with regard to local service segments—specific rates might be challenged.

The public interest is adequately and soundly protected by the provisions for suspension and investigation of a proposed fare or rate, and for investigation and disapproval of an existing fare or rate at any time. Provision for reparations is in derogation of this regulatory concept, particularly where it empowers a court to determine whether a Board-approved fare or rate is, or is not, unreasonably high.

Moreover, air carriers would be exposed to an unknown retroactive contingent liability, since long-established fares and rates—whether or not specifically approved by the Board—could be challenged at any time, and the complainant(s) could collect "reparations" dating back 2 years, from the date of complaint. This could be disastrous for a small carrier—such as a local service carrier—particularly since a carrier cannot get "retroactive" subsidy to compensate for "retroactive" reparations. If the Board has permitted, or should hereafter permit, a fare or charge by a subsidized carrier which a court might regard as unreasonably high, the net result would be reduction of subsidy. We have difficulty in seeing the public interest in thus penalizing the carrier for reducing subsidy.

The reparations aspect of the bill conflicts with the basic approach of the two bills. Where the overall battlecry is "deregulation" the reparations provision involves more regulation.

In no event should reparations be made applicable to fares and rates in foreign air transportation. For this country unilaterally to subject international air transportation to reparations could produce staggering international complications. There could be any number of retaliatory or conflicting movers by foreign

governments, who might well view the reparations provisions as an attempt to establish by indirection a form of control over international maximum rates and fares, or as an invitation to put their citizens in a position to extract money from U.S.-flag carriers. The fact that the challenged rate or fare had been established through the IATA machinery, and subsequently approved by the governmental agencies involved, would not be a defense against reparations claims.

6. Simplification of Government rates and procurement (H.R. 4701, section 9)

This brings us to section 9 of H.R. 4701, which is concerned with the simplification of Government transportation rates and procurement; and mail transportation by common carrier trucks. This section would amend section 321 of the Transportation Act of 1940 (which provides generally that rates on Government traffic shall be the full commercial rate) as follows:

(1) The present proviso excepts from the bid advertising requirements of title 49, public contracts, the procurement of transportation services, whenever the services required can be procured from a common carrier lawfully operating in the territory where such services are performed. This proviso would be amended to enable the head of an agency (or his designee) to negotiate terms and price of an agreement procuring transportation of U.S. Government traffic, including, in the case of the Post Office Department, mail transportation services by common carrier trucks.

(2) Section 321 would be further amended to empower the Administrator of GSA and the Secretary of Defense (or their designees) to negotiate or establish "simplified rate structures" for transportation for U.S. Governmen for periods of 1 year, renewable for successive periods of 1 year.

Both amendments presumably apply only to carriers subject to the Transportation Act; i.e., section 321 applies to "transportation by any common carriers subject to such act." However, the broad wording of the amendments at least creates ambiguity. Further ambiguity is created by Secretary Hodges' transmittal explanation of last year that the amendment relates to procurement of Government transportation "from all modes of transportation."

In any event, the provisions of the first subsection do not appear to be limited to the use of motor vehicles for transportation of mail. Thus, it is provided that any agency head may negotiate the terms and prices of contracts—

"* * * for the purpose of procuring transportation, including, in the case of the Postmaster General, mail transportation services performed by common carriers by motor vehicles * * *."

This language thus may not restrict the negotiation of such contracts to mail transportation by trucks.

It is objectionable in principle to empower any head of an agency who might want to negotiate a transportation contract to bypass the recognized ratemaking agency (viz., ICC or CAB). This would be so even if the bill were, in fact, limited to a single agency head, such as the Postmaster General.

We in all events oppose the amendment empowering GSA and/or DOD to negotiate or establish a simplified rate structure for the transportation of U.S. traffic.

The bill is altogether vague as to exactly what is being authorized. In providing that GSA or DOD may establish the rate structure for the transportation of U.S. traffic, the bill would appear to take away from the ICC its powers to determine rates, fares, and charges under the Interstate Commerce Act. If the bill also applies to air transportation, it would likewise strip the CAB of rate regulatory powers as to Government traffic. Such intention seems to be borne out by the introductory exclusionary clause, "Notwithstanding any other provision of law * * *" and by the proviso that the prospective simplified rate structure be first determined by the GSA and/or DOD to be in the public interest.

This could conceivably mean that the carrier would have three sets of tariffs—one regulated by the ICC or CAB, for private and commercial traffic; a second established by GSA; and a third established by DOD.

The amendment is ambiguous as to whether the GSA or DOD contract or agreement would be open to protest and/or suspension and investigation by the statutory ratemaking agencies, as in the case of ordinary tariffs. If not, the provision for establishment of rate structure for the carriage of U.S. traffic is sweeping beyond measure, and amounts to a blank check to the Government to write its own tariff demands.

Such free-wheeling authority to the military services and to civil agencies represented by the GSA would likely lead to increased Government "chiseling."

Every time an agency of the U.S. Government has been permitted to contract, on a competitive basis, for air transportation on any substantial scale the result has been bad. Recall for a moment some air transport history. Mail was carried under contract in the 1930's. Abuses developed which led to the cancellation of the mail contracts in February of 1934 and the brief and ill-fated experiment of moving the mail on Army aircraft. The contract system was continued in the Air Mail Act of 1934, designed to return the carriage of airmail to private companies. Much has been written on the chaos which resulted. Rates were steadily bid downward and finally, in a few cases, zero bids were received and accepted. By 1938 half of all the private capital invested in the industry had been lost, and there were serious doubts as to the industry's ability to survive. Congress then declared against the contract system in passing the Civil Aeronautics Act of 1938. It gave the Civil Aeronautic Board comprehensive authority to regulate economic conditions in the industry, including, of course, the rates for the carriage of mail by aircraft. It would be turning our backs on all history teaches us, to again write into law a provision similar to the ones which very nearly ruined the industry in the 1930's.

Nor was that tragic experience of nearly 30 years ago our last brush with this concept. A few years ago, a very serious situation resulted from the practice of the Department of Defense in contracting for air transportation. Through a series of exemption orders, the CAB in effect abdicated its authority to regulate the terms under which Defense traffic moves, and permitted that Department to contract with carriers, on a competitive basis for its air transportation needs. The procurement practices of the Department of Defense drove the rates to the level of out-of-pocket costs and lower. The traffic then made no contribution to airlift development and both the Department of Defense and the CAB became deeply concerned. Eventually, an equitable system was worked out through the cooperative efforts of Defense, the Board and the industry.

It is the contemplation of the amendment by its very wording that the proposed establishment of a rate structure result in rates that are lower than those normally applicable. The history of section 22 bidding and the sad experience of the air transport industry with airmail contracts in the 1930's and with DOD's procurement of military transportation a few years ago should indicate the dangers of a government-wide scheme for "negotiating * * * or otherwise establishing" rate structures for transportation of all U.S. Government traffic and accessorial services. In view of that history, reasons for deviating from present policy would have to be very powerful. To the best of our knowledge, no showing has been made that the Civil Aeronautics Board is unable to regulate a rate structure for the transportation of Government traffic which is flexible enough to meet the Government's needs.

The justification given for section 9 is the necessity to simplify complex common carrier tariffs, and more especially to facilitate dealing with them through automation. While there is some doubt, even among experts, as to the feasibility of handling tariff charges by automated processes, no one could take objection to the general goal of simplification. Carriers themselves—certainly the air carriers—devote untold man-hours and dollars to this desirable ultimate goal. However, it remains to be demonstrated how airline tariffs present so severe a problem, much less how automation, if feasible, is precluded under the existing system. If through some quirk in existing surface carrier statutes, automation of tariff handling would be prevented, the problem can be solved by dealing directly with that peculiarity. But no such quirk exists in the airlines area.

CONCLUSION

This testimony has reviewed the varied issues raised by H.R. 4700 and H.R. 4701 as they would affect air transportation.

We have attempted to point out that these are basically surface transportation bills; that they deal with certain problems of rail, motor, and water carriers; and that air transportation has been included in the scope of some of the proposals to achieve the appearance of equality of regulation, rather than as the result of a critical analysis of air transport problems.

This is not, in our view, a sound approach. There are, as we and the committee members are well aware, serious problems in air transportation. These bills, however, are not addressed to air transport problems.

We accordingly urge that the provisions dealing with air transportation be deleted from H.R. 4700 and H.R. 4701, and that these bills be considered as what they in fact are—surface transportation bills.

Appendix A. Comments on IATA Ratemaking Process

(Excerpts from statement of Stuart G. Tipton, president of the Air Transport Association of America, before the Transportation and Aeronautics Subcommittee of the House Interstate and Foreign Commerce Committee on H.R. 10655, H.R. 10657 and H.R. 7309, June 12, 1962)

"* * * Each nation is sovereign, and expects to play a part in the determination of rates affecting its citizens. International ratemaking is necessarily a multilateral problem. The rates from New York to London, and from London to Rome, obviously have an important effect upon the rate from New York to Rome. If each government insisted upon its right to make its own determinations without regard to others, international air transport ratemaking would be a shambles. The problem being a multilateral one in which each government has an interest, international air transport ratemaking required either multilateral agreement among governments or government approved multilateral agreement among carriers.

"The objection to having these negotiations conducted by governments was plain to our Government. It would have been impossibly time consuming. More importantly, the U.S. Government would have been placed in a position where it might have to make important concessions to achieve rate objectives. The conclusion was reached that the basic machinery for international ratemaking should be a conference of carriers to work out the detailed rate schedules for submission by each member carrier to its respective government for approval.

"Consistently with this decision, the International Air Transport Association was created [in April 1945], and has served ever since as the instrumentality for the development of rate schedules. The establishment of rates first requires unanimous agreement by IATA members and then approval by the various governments concerned, including the United States. * * * If the Board finds the agrement subsequently reached in IATA inconsistent with the public interest, the Board disapproves the agreement.

"This method of ratemaking was endorsed in the [1946] Bermuda Agreement, and has been followed in most bilateral agreements since entered into by the United States. However, the Bermuda Agreement went beyond this endorsement. It provided for a form of rate regulation by the governments. This was done at the insistence of the British Government, which, in common with other foreign governments in the immediate postwar period, feared that American carriers equipped with surplus transport aircraft would flood the international markets with low cost transportation. The protection provided by IATA was not considered sufficient because an American carrier by a negative vote could precipiate a rate war.

"The rate provisions in the Bermuda Agreement, and those in other agreements following the same pattern, provide that, in cases where there is no effective IATA rate agreement, a government objecting to a rate being charged will consult with the government of the carirer concerned. If consultation does not resolve the dispute, the matter will be carried to an impartial tribunal for an advisory report. The period during which all of this is taking place is, of course, likely to be a long one. Thus, the Bermuda-type rate provisions also deal with the question whether the disputed rate is permitted to remain in effect during this period, or whether it must be suspended or withdrawn. The United Kingdom insisted upon the right to prevent operations by American carriers at rates it considered objectionable, unless and until the U.S. Civil Aeronautics Board obtained rate control authority over American carriers sufficient so that the Civil Aeronautics Board would be able to protect the British carriers against the assumed menace of American rate cutting. This resulted in the inclusion in the agreement of two separate regulatory plans.

"The agreement provides that, if the Congress should enact legislation giving the Civil Aeronautics Board broad ratemaking authority in the international field, a disputed rate could continue in effect all during the governmental discussions and, later, consideration by an impartial tribunal. On the other hand, the agreement provides that, so long as the Board does not have this broad authority, the objecting government may insist upon immediate suspension of

the disputed rate pending further discussions and an advisory arbitral report. * * *"

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"* * * Notwithstanding the provisions of our bilateral agreements, there have arisen in the past few years a large number of cases where non-IATA carriers, strongly sponsored by their governments, have reduced their charges well below IATA rates. This has placed U.S. carriers in a difficult competitive position. IATA rates applicable to American carriers are carefully developed, and are approved by our Government. American carriers should be in a position to charge those rates without being undercut."

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"* * * We have pointed out that ratemaking and rate regulation in the international field are essentially multilateral. No one government can expect to impose its will upon other governments, nor can two governments bilaterally solve a multilateral rate-regulation problem effectively and successfully. If the fixing of international rates by individual governments were to become widespread, the operation of any airline on a sound economic basis would become virtually impossible, and public service would be impaired."

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"* * * it is essential that rates be fixed by an international conference of carriers. There is no other way to handle the highly complex problem of ratemaking. We would hope that the committee * * * will recognize that this is the case, and will make sure that no action is taken which will impair the ability of IATA to carry out this work effectively."

The CHAIRMAN. Thank you, Mr. Tipton, for your presentation this morning expressing the views of the Air Transport Association.

Mr. Rogers, do you have any questions?

Mr. ROGERS of Texas. Only this: Mr. Tipton, as I understand you, if there is going to be a fight on surface transportation, you want to stay out of it?

Mr. TIPTON. That is exactly right.

Mr. ROGERS of Texas. Are there any commodities involved in this that the airlines would handle generally?

Mr. TIPTON. We don't handle any bulk commodities. We handle a relatively small amount of agricultural and horticultural commodities but, as I pointed out, they are all specialized transportation; they are high-rated traffic, in which our shippers and the airlines have no minimum rate problem.

Mr. ROGERS of Texas. Thank you, sir. That is all.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

As I understand, Mr. Tipton, in H.R. 4700, your request is that section 5 be deleted. I do not believe that you are involved in the other sections.

Mr. TIPTON. Yes. That is right.

Mr. YOUNGER. Most of the sections which you mention are in H.R. 4701?

Mr. TIPTON. That is right.

Mr. YOUNGER. Now, there is one question that I have had in this connection, with our flower growers in California who ship mostly by air—which is the ability of the grower—the shipper—to recover when the product is damaged.

I have discussed this with you before. I think part of this is covered in here. As I understand it now, the airlines are getting together so that, where this is a through shipment with different lines, they will accept responsibility for the cargo.

Mr. TIPTON. Exactly, Mr. Younger. You and I did have some discussion about that.

After our discussion our industry had extensive discussions with representatives of the flower growers, to see if we could not work out the problem. I believe that we have it worked out to the satisfaction of both sides.

We transport quite a sizable amount of flowers and they are, of course, susceptible to damage. I believe we worked it out so that we are getting along fine with the flower growers now.

Mr. YOUNGER. If it is not worked out, then I think we ought to put it in this bill.

Mr. TIPTON. As far as this bill is concerned, it is not a rate problem.

Mr. YOUNGER. No.

Mr. TIPTON. It is not a rate problem. The flower growers have not been so concerned about the level of rates as they have been with their ability to establish and recover damage—their reimbursement for damages. I think it has been worked out.

Mr. YOUNGER. It is just to bring the airlines in line with all the surface transportation in that particular problem?

Mr. TIPTON. Yes. I think we have done it.

Mr. YOUNGER. Thank you. That is all.

The CHAIRMAN. Mr. Hemphill.

Mr. HEMPHILL. Thank you, Mr. Chairman. As I understand, the air transport association is opposed to H.R. 4700?

Mr. TIPTON. We are requesting that the air transport provision in H.R. 4700 be deleted—that the bill not try to treat with air transportation because the problem it is dealing with in this are not present in air transportation.

Mr. HEMPHILL. I notice, on page 4, you say, "Bulk commodities—sometimes defined as things that can be scooped, shoveled, or poured—are not presently susceptible to commercial air transportation. If and when it becomes practicable to scoop, shovel, and pour bulk commodities into commercial aircraft, there may, or may not, be a minimum-rate problem. It would be unwise to legislate now for an unknown future situation."

Mr. TIPTON. That is right.

Mr. HEMPHILL. That is a sort of summation of your testimony?

Mr. TIPTON. It is.

Mr. HEMPHILL. It is not like the testimony you gave before our subcommittee the other day. There might be something wrong, there might not be something wrong, but we want to make sure nothing happens. That is not your testimony today.

Mr. TIPTON. No.

Mr. HEMPHILL. I want to clear it up. The other day I was confused by the brilliance of someone's testimony on air transport saying we don't know what is right with the bill, we don't know what is wrong with it, we do not want any part of it.

Mr. TIPTON. No, I do not know who said that. I will inquire as to who did say that.

The CHAIRMAN. You are having some problems with your international air rates, are you not?

Mr. TIPTON. We are having a very considerable problem with our passenger rates and particularly on the North Atlantic right now.

But unfortunately I am afraid that legislation is not going to be able to help us.

The CHAIRMAN. You mentioned IATA in your statement?

Mr. TIPTON. Yes, I referred to IATA in connection with the inadvertent effect of section 5(c) of H.R. 4700. The reference to IATA starts on the bottom of page 6 and continues over to the bottom of page 7 and 7–A.

The CHAIRMAN. It is not clear to me what the impact would be.

Mr. TIPTON. I went at that too fast, I think, Mr. Chairman. Here is the problem. Section 5(c) of the bill says in effect that if this bill were to pass, the Civil Aeronautics Board would not be able to take action under section 414 of the Civil Aeronautics Act to issue exemptions from the antitrust laws with respect to these rate problems.

It is written so broadly that it would prevent the Civil Aeronautics Board from approving the action of IATA in reaching rate agreements in the international field with respect to agricultural, horticultural and fisheries products.

Now IATA has the responsibility by international agreement at the present time to carry on this work of reaching agreements with respect to all passenger rates and all freight rates so that if this bill were to pass, the Board's ability to approve their action would be eliminated.

The CHAIRMAN. Do you think the antitrust laws are applicable to international agreements?

Mr. TIPTON. These agreements are participated in by all of the American-flag carriers operating in the international field as well as all the foreign-flag carriers operating to the United States and it has been the belief of the lawyers concerned with this problem that, in the absence of Civil Aeronautics Board approval, there would be great question as to whether they weren't violating antitrust laws.

That is a pretty carefully hedged statement and I suppose you always have to carefully hedge your statements when you talk about antitrust laws. But there is very substantial hazard there of violating the antitrust laws in the management of international rate matters.

The CHAIRMAN. I was impressed by the appendix which was included with your statement and which will be made part of the record by comments made by you to a subcommittee of this committee last year. I want to refer to it. I think it probably deserves some special attention and I am reading now:

> The United Kingdom insisted upon the right to prevent operations by American carriers at rates it considered objectionable unless and until the U.S. Civil Aeronautics Board obtained rate control authority over American carriers sufficient so that the Civil Aeronautics Board would be able to protect the British carriers against the assumed menace of American ratecutting.
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> This resulted in the inclusion in the agreement of two separate regulatory plans.

Now, you subscribe to that statement now, do you not?

Mr. TIPTON. Yes, indeed.

The CHAIRMAN. Then it is your opinion that if you were to be included in this provision that it would be contrary to this agreement?

Mr. TIPTON. I do not know that you could say it is specifically contrary but it is certainly contrary to the spirit of the Bermuda Air Transport agreement which provides that IATA shall be looked to, in effect, to reach terms with respect to rates in the international field.

Now this bill comes along (H.R. 4700) and says that the Board can't approve ARA resolutions in this connection. To preclude this, I do think, is contrary to the spirit of the bilateral agreements.

The CHAIRMAN. Well, I can understand that. I think it is a plausible position. In other words, it is perfectly logical to me. But then we get on the other side of it and we find out IATA has its problems now because the international situation is such that under the IATA agreements the other countries want to increase rates and the Civil Aeronautics Board refused it. Is that substantially correct?

Mr. TIPTON. That is exactly right. This is an extraordinary situation we have now. With your permission let me speak for a moment about it.

IATA started its work in regulating international rates almost 15 years ago. During that time we have not had any very serious problems. They have all been worked out pretty well. One of the characteristics of international law, as it relates to air transportation, is that any carrier developed rates are subject to the regulation of any country to which the carrier goes.

That means that in the case of one of our carriers going to England, its rates are subject to regulation by England. If it goes to France it is subject to regulation by France. Italy and so on. It was obvious at the very beginning that we had to have some kind of machinery to iron out differences of opinion between all the different governments concerned or we would never be able to get a rate structure established.

So the problem was turned over to a conference of carriers to iron out these problems and reach agreements, which agreements would be subject to the approval of each one of these governments. The way it was worked out was a good way and the system has worked. Now we have a situation which has always been possible but has not arisen in such sharp focus until now.

A dispute exists. Differences of opinion exist between the U.S. Government and other governments, mostly European governments, as to whether some of the carrier-developed rates ought to be approved. In order to have these agreements effective, they must be approved by all of the governments concerned. We are in a considerable snarl right at the moment because a part of the rate agreement has been disapproved by the CAB.

I commented a moment ago in answer to the chairman's question that legislation would not help this. While this committee has considered legislation on this subject, and I hope that it will continue to consider it, legislation will not really solve this problem because we can't change the United Kingdom's opinion by passing legislation, or France's opinion, or its allies opinion.

We will still have this dispute between governments. I do hope that these governments can get their heads together and reach an agreement that will accommodate the views of all of them because, as can be readily seen, the carriers are kind of in the middle between these disputing governments at this time and I hope the problem can be licked.

I think the important thing here as it relates to this legislation is that IATA, the International Air Transport Association, which is a

conference of carriers, is an absolutely essential factor in the regulation of rates in the international field.

If we didn't have IATA we would have these disputes not once in 15 years but every year. If we turn these efforts to iron out rate problems over to governments, then it would become an impressive dispute each year in which governments would not only deal with the technical problems of ratemaking but we can always be worried whether political problems would also be involved; political and economic problems of concern to governments.

That is the reason we were so quick here today to point out that this bill with a kind of the back of its hand took part of IATA's jurisdiction away from it, a small part, but nevertheless a part.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. I am just wondering if you don't do this, how do you expect air to compete within the United States? In other words, if the Civil Aeronautics Board is going to set minimum rates and every time something comes up you have to run to them to lower the rate. I am thinking of horticultural goods.

How are you going to compete if the railroads all of a sudden drop their rate 5 cents a mile carrying flowers from Florida? How are you going to compete? You have to run back to CAB in order to be able to set your rate.

Mr. TIPTON. No, not exactly that. There are two answers to your question. One, we are not competitive with the railroads pricewise in the movement of flowers, for example. Their rates are far lower than ours now. We compete with them servicewise. We will move the stuff in 6 hours from the west coast here.

It takes them 2½ days or something like that. So that a shipper buys service from us. Normally our freight rates average in the neighborhood of 20 cents a ton-mile. I am not completely familiar with rail rates but I would be surprised even on flowers if they would run flowers or similar high-value stuff, if they would run over 5 to 8, say, so that we are not competitive with them pricewise.

Mr. SPRINGER. If you are not competitive then what difference does it make?

Mr. TIPTON. We are not competitive with the railroads but there is vigorous competition within the air transport industry for this class of business. Consequently, you would needlessly, we think, create a possibility of creating rate wars which would drive the prices down on these high-value commodities to the point where other classes of freight would be subsidizing them.

Mr. SPRINGER. Now let me get this straight. Your objection here now in the domestic field is the fear of rate wars; is that correct?

Mr. TIPTON. That is right.

Mr. SPRINGER. Let me ask you this. On this whole question of subsidy does not the Commission have the right to take this into consideration when you apply for subsidy?

Mr. TIPTON. As you know, the trunkline carriers that handle 95 percent of the business in the domestic part of the country are not subsidized at all. The local service carriers that specialize in the service to smaller communities are subsidized. In the case of the local service carriers if they would permit them to get into a rate

war and drive their rates down, then the Board could take that into account, I suppose in some fashion.

But in the case of trunklines who handle the bulk of the business in the United States, the Board would have no control at all.

Mr. SPRINGER. Let me ask you this. Railroads are asking for this legislation. There is great competition between the railroads as I understand it and would there not be such a fear on their part that there would be rate wars among themselves?

Mr. TIPTON. I don't know enough about their business, Mr. Springer, to know whether there is that same concern. I would think there probably would be that concern. They have apparently made a judgment that they be prepared to undergo that hazard in order to get something else they want.

In our case, however, and this is in the freight business particularly, we have a great deal of concern about a rate war because the Board's regulatory activity in this field has been, up to now, the exercise of the minimum rate power.

Mr. SPRINGER. You mean to keep out rate wars?

Mr. TIPTON. That is right, to avoid destruction. Some of our freight carriers—this is not an academic problem at all—some of our freight carriers have had to disappear from the scene because the rates have been driven down to the point where they were completely uneconomic.

Mr. SPRINGER. Your objection is on account of IATA in the international field and your objection in the domestic field is the fear of rate wars which would drive some companies out of business. Is that correct?

Mr. TIPTON. Exactly.

Mr. SPRINGER. Are there any others?

Mr. TIPTON. There is a third factor. That factor is this: That with respect to us there is no offsetting advantage. We have no problem. There is apparently a problem in the surface carrier field which causes support for this elimination of minimum rates.

In our business we have no problem. There is nobody that wants to eliminate minimum rates. Our shippers are not clamoring for that. There is no interest in it. So that you have three points actually.

One, the IATA problem which I think maybe was an inadvertency. Second, a concern about rate wars which we feel would do great damage, and third, the fact that in our business the elimination of minimum rate regulations would do no good.

Mr. SPRINGER. There is also a fourth factor, the public interest.

Mr. TIPTON. The public interest is a part of all three of those factors I think in that we believe that there is a great public interest in our business in the development of freight transportation. We think we have been able to contribute a great deal toward the improvement in distribution of products in this country by permitting them to move at such high speed.

In order to develop the freight business in the public interest we believe that the minimum rate regulations should be continued.

Mr. SPRINGER. Thank you.

The CHAIRMAN. I don't want to pursue this other matter at all but I was advised by the Civil Aeronautics Board recently that if the nego-

tiations broke down, which were underway in April, and if they did not resolve the matter by April 29, and I quote this:

This country may well be at a serious disadvantage, at least temporarily.

Now I understand the negotiations did break down?

Mr. TIPTON. They did indeed.

The CHAIRMAN. And the matter has not been resolved?

Mr. TIPTON. The date was moved to May 12. That was the only change that was made.

The CHAIRMAN. Are we then at a serious disadvantage?

Mr. TIPTON. Not in my opinion, Mr. Chairman. The Civil Aeronautics Board issues permits to foreign-flag carriers under the Civil Aeronautics Act, under section 402 of the Civil Aeronautics Act. At the present time it is my understanding that the British Government has said that if this is not resolved to their satisfaction they will have to consider the restriction or elimination of American-flag service to the United Kingdom.

I would have no doubt that if the British Government were to move in that direction our Government would have the legal power and right to move in that same direction with respect to British carriers coming here. The law does not leave the CAB powerless.

The Board has a problem with respect to its international ratemaking power which was considered by this committee last year. Last year the matter was brought before the committee, which considered giving the Board additional power over international rates.

The Government, however, suggested that consideration of the legislation be discontinued because the Government was conducting a study of international air policy and the committee did discontinue its consideration of that rate legislation.

The CHAIRMAN. I don't want to pursue this further at this point because we have other witnesses, except that I would say this. In your statement at that time you said that the Government objecting to a rate being charged would consult with the government of the carrier's concern. Has that consultation started?

Mr. TIPTON. It is my understanding that the meeting held in London last week was a part of that consultation. Our Government consulted with quite a number of other, seven or eight, governments I think in London. That was part of it.

The CHAIRMAN. We will have opportunity to go into this more fully.

Mr. TIPTON. It is very important. I hope this committee will study it carefully.

The CHAIRMAN. I will say to you that we intend to pursue the matter because we want to find out more about it as well as some of the other involvements with international air transport. Thank you very much, Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman and members of the committee.

Mr. SPRINGER. Mr. Tipton, may I ask one further question before you get away from here. In connection with IATA will "air union," if it comes into being have any substantial effect on the problem involved in this legislation?

Mr. TIPTON. Inevitably——

Mr. SPRINGER. I don't want to get into details. This is coming, I am almost sure; is this going to have any effect on you?

Mr. TIPTON. I will answer it very generally. I think it will not have a direct effect, but any combination of carriers of that sort will inevitably have its effect because they will tend to speak with one voice and thus carry instead the weight of one they will carry the weight of six or seven. That is a very generalized statement.

I think when the committee does take up this international rate matter I think that is part of the inquiry that will have to be made.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. TIPTON. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Walter K. Cabot, general traffic manager, Johnson & Johnson, New Brunswick, N.J.

I understand you are appearing for the U.S. Chamber of Commerce.

Mr. CABOT. Yes, sir.

The CHAIRMAN. You may proceed.

STATEMENT OF WALTER K. CABOT, CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. CABOT. My name is Walter K. Cabot. I appear on behalf of the Chamber of Commerce of the United States. I am a member of the chamber's transportation and communication committee, and chairman of its subcommittee on transport policy.

My business connection is that of general traffic manager, Johnson & Johnson, New Brunswick, N.J.

In general, the national chamber supports changes that would be made by H.R. 4700 and H.R. 4701 in the Interstate Commerce Act. I shall, however, recommend that certain provisions of both bills be modified to some extent.

First, in the way of introduction and in order to indicate the careful attention given this proposed legislation by the chamber, I should like to describe briefly the composition of the transportation and communication committee and the study it has given these proposals.

This committee initiated the chamber's position on these two bills. It is a 62-man committee, composed of a balanced representation from all modes of transportation and communication, and includes financial interests, educators, publishers, and industrial traffic managers, and other users.

It has studied the President's proposals ever since they were initiated in his transportation message of April 5, 1962. The committee has studied the principal testimony taken last year and it has discussed the proposals at some length.

With all viewpoints represented on the committee, I have no hesitancy in saying that all arguments pro and con were fully aired. The conclusions reached in a number of instances, of course, were not unanimous, but the majority was substantial.

H.R. 4700—EXEMPTIONS FROM MINIMUM RATE CONTROL

I should like to discuss first H.R. 4700, which would exempt all carriers subject to regulation by the Interstate Commerce Commission from minimum rate regulation in the carriage of bulk commodities, livestock, agricultural and fishery products, and passengers.

Air carriers, subject to regulation under the Federal Aviation Act, also would be given the same treatment as far as the carriage of bulk commodities and livestock, agricultural and fishery products are concerned, but exemption as to passenger fares would be deferred.

In the explanation accompanying the draft legislation, it is said that to compensate for these exemptions, section 5a and similar sections of the Interstate Commerce Act—and applicable sections of the Shipping Act of 1916 and the Federal Aviation Act—would be amended to make the carriers subject to the antitrust laws as defined in section 1 of the Clayton Act, except with respect to agreements applicable solely to through routes.

The national chamber supports H.R. 4700 with certain reservations that may be summarized as follows:

We approve of the new language inserted in the bill this year making it clear that authority of the Interstate Commerce Commission over discriminatory and preferential rates is retained. It also should be made clear that provisions of section 6 of the act, which requires the filing of tariffs, are retained.

Predatory rates and monopolization should be prohibited, but the reference to the antitrust laws in the bill is too vague.

Carriers and shippers should be permitted to continue to discuss all rate changes through the facilities of rate bureaus or conferences, not only rates for through routes, and consequently section 5a, and other similar sections of the Interstate Commerce Act and the Shipping Act of 1916, should be preserved.

Because the competitive problem in air transportation, both as to extent and nature, is quite different than in surface transportation, all reference to air transportation should be eliminated from the bill.

Also, since regulation of minimum passenger fares presents no problem, exemption for this also could be eliminated.

The reason for a legislative proposal such as H.R. 4700 was aptly stated by the Secretary of Commerce when he said the Government has two choices: To continue to regulate more and more strictly "winding up with a Government dominated transportation system" or to break with the practices of the past and put more and more responsiblity on the industry to provide the transportation services we should have.

We are in a situation where we find that motor carriers are exempt from all regulation in the carriage of livestock and agricultural and fishery products.

Competing railroads are not. Water carriers are exempt from all regulation when carrying bulk commodities provided they do not carry more than three commodities in a vessel or two. Railroads and motor carriers are not.

To equalize this situation, we have the two choices referred to by the Secretary of Commerce, more regulation or less.

Economic regulation is sometimes necessary to protect the public interest. But regulation slows down change—even that which may be in the public interest. The same end result, without the inhibitions of regulation, can be achieved through equal and fair competition.

The forces of competition encourage progress and time-consuming regulation retards progress. Equal and fair competition produces actions which will generally prove to be in the public interest.

H.R. 4700 moves in the direction of equality in regulation and of permitting the forces of competition greater opportunity to work. If all carriers—rail, motor, and water—are relieved of minimum rate control on the products involved, to that extent at least, they will be placed on an equal footing.

And, probably, just as important, they will be in a better position to meet the competition offered by bona fide private carriage and reduce unlawful for-hire carriage.

One form of tranpsortation, however, should not be placed in a position to discriminate unduly between shippers or localities.

Therefore, we endorse the new language in section (a) which makes it clear that the Interstate Commerce Commission shall retain all currently effective authority and power over unjust discrimination and undue preference or advantage.

This provision should prove adequate to protect against this type of problem. But, if it is not, it should be made so.

Some apprehension has been expressed in the past that the provisions of section 6 of the Interstate Commerce Act, requiring the filing of tariffs, might not be applicable if authority over the minimum rates involved is removed. It should be made clear that this power remains undisturbed in order that all interested parties may be notified of rate changes.

With the removal of ICC authority over these minimum rates, we also recognize that one carrier might be able to eliminate others through predatory pricing.

This, of course, should not be permitted, as pointed out by the President in transmitting his proposals. He said that the legislation should assure "the protection of the antitrust laws against any destructive competition." We agree.

In our view, however, the draftsmen have gone too far in H.R. 4700 in an effort to comply with this objective. They have included under the heading of antitrust laws all of the various enactments referred to in section 1 of the Clayton Act (15 U.S.C.A. 12).

Some of these laws are obviously not applicable and others the courts have ruled not applicable. Congress should delineate those antitrust sections that are to be applied.

Certain of them are not applicable to transportation service and others duplicate provisions of the Interstate Commerce Act. The legislation needs to be made explicit in this respect by clearly specifying the type of antitrust law that should be applied to safeguard against predatory pricing.

In this connection, also, H.R. 4700 would remove the protection of section 5a of the Interstate Commerce Act—and applicable sections of other acts—with regard to the exempted minimum rates.

This section enables carriers, under agreements approved by the Commission, to confer among themselves and with shippers with the objective of jointly establishing rates.

This procedure has proved to be very valuable to both shippers and carriers. It should be retained.

Conferences operate as open forums. Carriers and shippers are kept informed about matters in which they are mutually interested, and opportunity for discussion is afforded all before a decision is reached.

This is especially valuable to smaller shippers who might not otherwise be equipped to keep informed as to rate matters.

Also, under this procedure, it is possible to consolidate the filing of tariffs and make them available in one publication, thus eliminating a multiplicity of individual tariffs.

Proposed rates are subject to the Commission's scrutiny and should it question their legality from its own study or as the result of objections by any eligible party, it is empowered to suspend any change pending investigation and decision.

In this connection, it also should be kept in mind that carriers may not make any rate they care to under this legislation.

The proposed change means only that the Commission can no longer question the reasonableness of a rate because it may be thought to be too low.

Any rate, including a reduced rate, would still be subject to question on the grounds of discrimination, prejudice, preference or advantage, or as predatory.

We urge therefore that the provisions of H.R. 4700 which would limit conference agreements to through routes and through rates be eliminated.

We also urge that because bulk commodities as described in the bill are not carried by air and the situation with respect to livestock and agricultural and fishery products is quite different in air transportation, reference to air transportation and the Federal Aviation Act also be eliminated.

TRANSPORTATION ACT OF 1963

Now, I should like to turn to section 3 of H.R. 4701, the right to ship vehicles or containers on carriers of other modes without price discrimination.

This provision of the bill would require railroads or common carriers by motor vehicle or water subject to the Interstate Commerce Act to accept shipment by any carrier, whether regulated or not, of loaded or empty vehicles or shipping containers without discrimination as to service or rates. It is intended to give carrier-shippers, as in piggyback, the same service and rates as noncarriers-shippers.

Since this proposal is designed to obtain improved coordination of all forms of transportation by providing equal competitive opportunities in connection with container transportation, we urge its enactment.

ENFORCEMENT AGREEMENTS WITH STATES ON HIGHWAY TRANSPORTATION—SECTION 5

The purpose of this section is to help eliminate unlawful for-hire carriage which is generally believed to be widespread because of nonuniformity in State laws and practical limitations in enforcement.

It would give the Interstate Commerce Commission new authority to make cooperative agreements with the States to facilitate enforcement of both State and Federal laws.

The entire transportation industry is concerned about the inroads that have been made by unlawful transport operators. Illegal for-hire carriage has reached significant proportions according to reliable sources including the Interstate Commerce Commission and the National Conference of State Transportation Specialists.

An authoritative industry source has estimated that unlawful for-hire movements range between 5,000 and 30,000 trucks each day.

There presently is a great deal of room for improvement in enforcement activities at both the Federal and State level, although efforts have been stepped up at both levels during the past several years.

With passage of this legislation authorizing cooperative agreements, Interstate Commerce Commission and State officials should be able to get closer together on enforcement efforts directed against illegal for-hire truckers.

We urge enactment of this section because forceful and effective steps must be taken to eliminate nonlegal for-hire carriage. We do not believe that this action would inhibit the operations of legitimate private carriage.

EXTENSION OF CIVIL FORFEITURE PENALTIES OF THE INTERSTATE COMMERCE ACT—SECTION 6

This section would extend and increase the civil forfeiture provisions of the act to any person who operates a motor vehicle in interstate or foreign commerce without the operating authority required under the act.

The stated purpose of this proposal is to make the increased civil penalties a significant deterrent to unlawful motor carrier operations and to assist in policing unscrupulous operators who have persisted in unlawful operations.

In addition to this, however, it would make the increased penalties applicable to violations of safety regulations. These violations are sometimes unintentional or of minor consequence.

The amount of the penalty that would be prescribed for this type of violation is unnecessarily high and the availability of civil forfeiture penalties for this type of violation could lead to harassment.

We urge that this section deal only with unauthorized operations and that violations of safety regulations continue to be dealt with as they now are.

With this amendment, and without passing upon the reasonableness of the amount of forfeiture, we endorse the section.

SIMPLIFICATION OF GOVERNMENT TRANSPORTATION RATES AND PROCUREMENT—SECTION 9

The stated purpose of this proposal is to authorize simplification of rate structures for the procurement of Government transportation and by experiments develop systems that will make rate ascertainment and publication less costly and more convenient.

While simplification of the rate structure and experimentation are desirable objectives and should be encouraged, it appears that the legislation as now drafted would permit the making of rates for Government transportation completely free of control. This could result in Government rates which would be lower than those available to commercial shippers.

Government agencies, as you know, are now permitted under section 22 of the Interstate Commerce Act to negotiate rates with carriers free of any control of the regulatory body.

Section 9 of H.R. 4701 apparently would extend this freedom from control to the contemplated simplified rate structures.

The national chamber urges that charges for transportation service performed for Government be subject to the same regulatory controls and rate policies as those which apply to the general public, except when authorized by the appropriate regulatory agency because of an emergency.

When the Government is given preferential treatment in relation to transportation costs, the carriers must either subsidize the Government by absorbing part of the cost or, as is much more likely to happen, they must make up the losses by charging private industry more.

Private negotiations with carriers also encourage destructive competitive practices between and among the several modes of transportation. In normal situations, destructive competitive practices can be prevented by the regulatory agencies.

Such practices resulting from private negotiations, not subject to regulatory agency review, result in charges for services at levels below or perilously near the bottom level of cost of performing the service.

This jeopardizes the financial stability of the carriers and violates the principles of national transportation policy calling for the fostering of sound economic conditions in transportation and among the several carriers.

Therefore, we urge that section 9 be amended to make sure that the rate simplification authorized will be subject to the same regulatory controls as those applying to the general public. So amended, we would endorse this part of the proposal.

The section also includes language to give the Post Office Department greater flexibility in the use of motor common carriers for the transportation of mail. The chamber has taken no position on this part of the proposal.

TRANSFER OF RAIL LOAN GUARANTEE AUTHORITY—SECTION 10

This proposal would transfer the railroad loan guarantee program from the Interstate Commerce Commission to the Department of Commerce, as was done in the case of the air carrier loan guarantee program by the past Congress (Public Law 87–820).

However, in contrast with the precaution taken in the case of the latter, the present proposal does not require that the Department of Commerce seek the advice and consider the views of the regulatory commission, in this case the Interstate Commerce Commission, in passing upon loan guarantee applications.

Since the Commission is expert in the field of railroad financing, we believe its advice should be sought and that a requirement to this effect should be added.

Otherwise, we believe the transfer should be effected since it should achieve better coordination with other related programs being administered by the Department of Commerce, improved administration, and more equitable treatment for the various carriers under the related programs.

COMMODITIES CLAUSE REPEAL (H.R. 4850)

In addition to H.R. 4700 and H.R. 4701, in his letter of transmittal, the President recommended, among other things, the repeal of the existing prohibition against rail carriers transporting commodities in which they have an interest. This is commonly referred to as the "commodities clause."

This prohibition was originally intended to prevent discrimination and preferential treatment by railroads in the marketing of coal. However, it has served its purpose and now represents an unnecessary form of regulation that unfairly burdens one form of transportation.

If any abuses such as it was intended to prevent should arise in the future, the unjust discrimination and undue preference provisions of the Interstate Commerce Act would be sufficient to control them.

We urge repeal of the clause.

The CHAIRMAN. Mr. Cabot, I want to compliment you for a very fine, clear, and concise statement expressing the views of the Chamber of Commerce of the United States of America.

Mr. Rogers, do you have any questions?

Mr. ROGERS of Texas. I have no questions.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. This is a good statement, may I say, and numbering the sections 1, 2, 3, 4, makes it much easier to understand.

Thank you.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. No questions.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. I want to join my colleagues, Mr. Cabot, in thanking you for the recommendations you have made.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. Cabot, you have made a very fine statement this morning. I do not agree with all the conclusions you have reached. I am particularly concerned about your views with regard to the railroad financing section.

Are you familiar with the fact that because of the low level of competence of the Interstate Commerce Commission, the Federal Government is now the largest stockholder, in fact, the principal owner of the New Haven Road?

Mr. CABOT. Yes, I understand it is the principal owner.

Mr. DINGELL. This kind of incompetence is not calculated to recommend the ICC as the supervisory agency over loan guarantees, or would you disagree with that?

Mr. CABOT. We are advocating that the guarantee authority should be transferred to the Department of Commerce but that the Department of Commerce confer with the regulatory body, in this case the ICC, to get their views.

Mr. DINGELL. In order that the Government might own more railroads?

Mr. CABOT. Well, we hope not.

Mr. DINGELL. That is the record of the ICC.

Now, in regard to a couple other points you raise, you made mention of section 22: "Simplification of Government Transportation Rates and Procurement."

We have had particular problems in the Great Lakes area in regard to shipping through our ports. We have found, for example, that under section 22 railroads will charge less to ship to ports along the Atlantic coast than they would to carry freight from the same point of origin to the point of Detroit, a distance of 15 miles.

What are we going to put into this bill to be sure that there will be no such discrimination applied to our inland ports because of simplification of Government transportation and procurement?

Mr. CABOT. We believe the rates for the Government should be subject to the same regulatory process as to discrimination, preference, prejudice, localities and places, as the rates for commercial use.

Mr. DINGELL. Now you are coming to a point that very much concerns me and I think a number of other members of this committee.

That is, what real protection do we have in H.R. 4700 against rate wars, discriminatory pricing within the rail industry? What real protection do we have?

Mr. CABOT. We advocate that it be clearly stated in the legislation that sections 2 and 3 of the Interstate Commerce Act, "Preference" and "Prejudice," be retained.

They are in there now, and we believe they should still apply. That would leave perhaps predatory pricing, which is covered now by various antitrust laws, or similar type legislation could be incorporated in the Interstate Commerce Act.

Mr. DINGELL. Who would administer the antitrust laws?

Mr. CABOT. At present, except where ICC approval is substituted, it would be the Department of Justice.

Mr. DINGELL. The Department of Justice would administer them?

Mr. CABOT. The antitrust laws that now apply. We do not advocate, take a position one way or the other, on whether it should be the Department of Justice or the Interstate Commerce Commission, but not both.

If it is to be the Interstate Commerce Commission, it would require a change in the Interstate Commerce Act.

Mr. DINGELL. Robinson-Patman is not one of the antitrust laws which is made applicable. Is it?

Mr. CABOT. It is included in the proposed bill but there is considerable doubt as to its applicability to services.

Mr. DINGELL. That outlaws area price discrimination?

Mr. CABOT. As for as commodities are concerned.

Mr. DINGELL. Now the failure to include that would possibly result in a situation where we might go back to the old long-haul-short-haul problem, might it not?

Mr. CABOT. Discrimination between points would be covered by the Interstate Commerce Act, points or places.

Mr. DINGELL. Not according to the way the bill is drafted, but according to your amendment; am I right?

Mr. CABOT. Under sections 2 and 3 of the Interstate Commerce Act, now.

Mr. DINGELL. Sections 2 and 3 would no longer be applicable because of the exemption that is given for minimums?

Mr. CABOT. We think those should be subject to 2 and 3 and the bill now so states.

The rates could not be challenged because they were claimed to be unreasonably low but they could be on the basis of preference or prejudice to one point or location.

Mr. DINGELL. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Glenn?

Mr. GLENN. Mr. Cabot, as a fellow New Jersey man, of course, I know of your great experience in traffic and transportation. I appreciate very much your statement on behalf of the U.S. Chamber of Commerce, and I compliment you for it.

Mr. CABOT. Thank you.

The CHAIRMAN. Van Deerlin?

Mr. VAN DEERLIN. I have one question.

On your transportation and communication committee, I assume there is representation by the water and river barge industry, as well as the other media of transportation?

Mr. CABOT. Yes, sir, there is representation on the committee.

Mr. VAN DEERLIN. What you would call adequate representation?

Mr. CABOT. Yes, sir.

Mr. VAN DEERLIN. Thank you.

The CHAIRMAN. Mr. Broyhill?

Mr. BROYHILL. No questions, Mr. Chairman.

Mr. YOUNGER. Mr. Chairman, may I please make one comment?

The CHAIRMAN. Yes, sir.

Mr. YOUNGER. I just want to recognize Mr. Cabot and his firm. They have a very fine plant in our district. We appreciate that.

Mr. CABOT. Thank you.

The CHAIRMAN. Mr. Cabot, it is not clear just why you want the provisions of section 5a of the Interstate Commerce Act to apply to all minimum rates rather than just joint rates as provided in the bill.

Mr. CABOT. I am sorry, Mr. Chairman, I didn't get the start of your question.

The CHAIRMAN. I said it is not clear to me just why you want the provisions of section 5a of the Interstate Commerce Act to apply to all minimum rates rather than just joint rates as provided in the bill.

The question is, Has your counsel given you an opinion whether or not you, or Johnson and Johnson as shipper, could enter into a rate agreement with a railroad for shipment that would put you in a conspiracy under the Sherman Act?

Mr. CABOT. I believe you are referring to section 5a of the Interstate Commerce Act.

The CHAIRMAN. Right.

Mr. CABOT. The provision for processing rates through associations, conferences, or boards, I believe, is very valuable in stabilizing the transportation industry and also in the shippers' interests.

Carriers can discuss these problems, these rate matters, as long as they do so under agreements that have been approved by the Interstate Commerce Commission.

The shippers have an opportunity to consider the rates and discuss them with the carriers, whether they are single line or joint line.

Frequently we are just as much interested in one as the other.

As to the second part of your question, Mr. Chairman, I don't contemplate as a shipper we would be entering in an agreement with the carriers.

These agreements under 5a are between carriers for ratemaking purposes, not between shippers and carriers.

The CHAIRMAN. I must say that if I could be sure that the objective which you mentioned could be accomplished, I think it would have a lot of bearing on my position.

Mr. CABOT. As to section 5a, I might explain that as a shipper we have had problems with rate conferences, but we are in favor of them.

If I could describe why, it might be helpful, Mr. Chairman. If the motor carriers or any of the carriers are proposing a change in rates or classifications or rules or regulation under their 5a agreements, they must publish those and docket them for public hearing.

We get copies of the dockets; we can see what is going on in all territories, what may affect us, and then they are set for public hearing, and we have an opportunity to go to those hearings, conducted by these bureaus or conferences, and express our opinion on the rates.

At the same time, if we have a proposal pending, our competition has a chance to see it and go there, too. So, we have an opportunity to see what changes are proposed and let our views be known before they go to the Interstate Commerce Commission as filed tariffs.

The CHAIRMAN. That is all well and good. But the thing that disturbs me is that you say it would be relieved of the problem of regulations on minimum rates.

At the same time through the operation of certain antitrust laws and the present provisions of the Interstate Commerce Act, discrimination practices, prejudices and predatory price cutting, and so forth, could be adequately dealt with.

It is difficult for me to see how on the one hand we can extend that authority and then extend certain provisions of the antitrust laws and utilize the present so-called prohibitions in the Interstate Commerce Commission Act which under court interpretation are not very effective and then use other provisions of the antitrust laws to prevent what you said would be a dangerous thing if permitted.

Now, if you can provide us with some kind of proposal that will carry out all those objectives in this manner, I would like to see it.

You have made a very fine statement on behalf of your organization and with the thanks of the committee.

(The following letter was received in response to the above request:)

CHAMBER OF COMMERCE OF THE UNITED STATES,
Washington, D.C., May 20, 1963.

Hon. OREN HARRIS,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During the interrogation of the national chamber's witness on H.R. 4700, Mr. Walter K. Cabot, you inquired as to just how our proposals with respect to the prevention of discriminatory, preferential and predatory rates would fit in with our advocacy of retaining the protection of section 5a, of the Interstate Commerce Act, against operation of the antitrust laws.

I am glad to explain.

Section 5a provides for the submission to, and Interstate Commerce Commission approval of, agreements entered into among carriers of the same class relating to rates, fares, etc. When approved, under rules and regulations of the Commission, the agreements permit the carriers to discuss rates among themselves and with shippers, in conferences or rate bureaus, and be relieved for this purpose from the prohibition of the antitrust laws against such practices.

The rates arrived at in this manner, however, are subject to all applicable provisions of the Interstate Commerce Act. At the present time, these include the prohibitions against unreasonableness, discrimination, preferences, and advantage.

Under H.R. 4700, only the prohibition against unreasonably low rates would be removed. All the other provisions of the act with respect to discrimination and preference are specifically retained.

Since, under the bill, there is some question as to whether carriers would be able to attack a rate of another carrier as being so low as to become predatory, the chamber believes that safeguards against such rates should be provided. The antitrust laws (sec. 2 of the Sherman Act specifically) are available for this purpose and would still be available if section (b) (p. 4, lines 5 through 11) of H.R. 4700 were stricken from the bill, as we recommend.

Consequently, we see no reason why section 5a could not be effective as to all rates, not just through rates, and sections 2 and 3 of the act, respecting discrimination and preference, similarly remain in effect as to all rates, with predatory practices being covered by section 2 of the Sherman Act. As to the last, if thought desirable to have carriers regulated by only one agency, language similar to section 2 of the Sherman Act could be written into the Interstate Commerce Act.

I hope this further explanation will clarify our position and we thank you for the opportunity to present it.

Sincerely,

THERON J. RICE.

Mr. SPRINGER. May I ask a question at this point?

The CHAIRMAN. Yes.

Mr. SPRINGER. You have raised a question. This has confused me a little bit, Mr. Cabot, on the third point, because this is one that I was not conscious of until you brought it out.

Do you feel that this bill does remove that, does remove the effect of 5a or remove 5a or modify 5a?

Mr. CABOT. Yes. I believe it does. It states that the carriers would be subject to the antitrust laws, except on joint rates.

Mr. SPRINGER. Does it say it modifies 5a?

Mr. CABOT. The bill says:

Section 5a of the Interstate Commerce Act is amended by changing the period at the end of paragraph (9) to a comma, and adding the following: "except that such relief shall not extend to any party to an agreement with respect to any rate, charge, or fare for transportation of any commodity referred to in section 1(23) of this act, or of passengers."

So, it would modify section 5a.

Mr. SPRINGER. How are you going to keep the problems that arise

under the antitrust law if you retain that by not putting a bottom on rates?

Mr. CABOT. This section 5a would permit the carriers to process rates through the conference ratemaking and be relieved of the antitrust provisions in those respects.

But, we still advocate the retention of sections 2 and 3 of the Interstate Commerce Act so that you can still attack those rates on the basis of discrimination, preference and prejudice, and as predatory. Predatory pricing would be the only one not covered at the present time by the act and it is subject to present antitrust laws. If thought desirable the same type of restriction could be incorporated in the act.

As far as the ratemaking under section 5a, it permits carriers to jointly discuss rates and rules and regulations free from antitrust.

Mr. SPRINGER. Even though there is no minimum rate fixed?

Mr. CABOT. Yes.

Mr. SPRINGER. I get your point.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Cabot, for your statement.

Mr. CABOT. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Ernest R. May. We have our colleague from Wyoming, the Honorable William Henry Harrison, with us today. We are very glad to welcome you, Mr. Harrison, before the committee this morning. We will be pleased to have you present your constituent to the committee.

STATEMENT OF HON. WILLIAM HENRY HARRISON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mr. HARRISON. Thank you very much.

Mr. SPRINGER (presiding). This is the General Harrison, grandson of the President and a great-grandson of another one. I think there are five William Henry Harrisons in my district that I know personally, also.

Mr. HARRISON. Thank you very much, Mr. Chairman. I appreciate very much the privilege of introducing to you and to the members of the committee a very good friend of mine, Mr. Ernest R. May of Meeteetse, Wyo.

He is not only one of our outstanding businesmen but also president of Wyoming Stock Growers Association, an organization which has been in existence even prior to the admission of our State, an organization which has always worked for the interest of our cattlemen in Wyoming.

I know that Mr. May is very familiar with the problems of our industry and I think that you will find him a very fine witness and I leave him to your mercy.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Harrison. We are happy to have had you with us and your comments. Mr. May, you may proceed as you prefer.

STATEMENT OF ERNEST R. MAY, PRESIDENT, WYOMING STOCK GROWERS ASSOCIATION

Mr. MAY. My name is Ernest R. May, and my post office address is Meeteetse, Wyo. I live on a ranch near this place which is just south of Cody. I am president of the Wyoming Stock Growers Association, and I am here to testify in that capacity. I want to express our support, in general, for the proposals contained in H.R. 4700 and its companion bill, S. 1061.

These proposals come from one of the suggestions contained in the message on transportation submitted to Congress last year by the President of the United States. Among other things, he pointed out the basic inequality that results from an inconsistency in the law under which the transportation of agricultural products and bulk commodities is strictly regulated when they are moved by railroad while the transportation of these same farm products is free of regulation when they are moved by truck and bulk commodities are free when moved by barge.

The suggestion in that message that some degree of equality should be accomplished by removing from the railroads some of the controls over this transportation has been considered by our people. At the meeting of the American National Cattlemen's Association held at Las Vegas, Nev., earlier this year, the subject was fully discussed before the transportation committee which formulated a resolution and offered it for adoption.

Such resolution when considered by the resolutions committee, of which I was a member, was approved and was then adopted by action of the membership. It reads as follows:

> Resolved that we support Federal legislation which would free railroads to make competitive rate reductions on bulk and agricultural commodities in a manner which can better serve the cattle and agricultural industry. This legislation must preserve the prohibitions against unjust discrimination, undue prejudice, preference, and monopoly.
>
> The legislation should also contain provision for a proper relationship between live animal rates and dressed meat rates.

As I have said, the foregoing resolution was adopted by the American National Cattlemen's Association in its convention at Las Vegas, Nev., on January 31, 1963.

I believe this resolution fairly expresses the view of the great majority of the people engaged in the cattle business. We have not considered and certainly have not endorsed legislation which would make the transportation of bulk and agricultural products subject to regulation by the ICC or any other agency when moved by truck or by barge.

It is my personal opinion that the solution of the problem is not to be found in shackling the trucks and barges merely because we have been unwise enough to shackle the railroads.

In my opinion there should be less, not more, regulation. We want both the trucks and the railroads to be as nearly free as is practical to fix their rates at whatever level they think is good business. We want them free to compete.

Certainly we see the basic injustice of allowing one form of transportation to change its rates at will while denying a competing form of transportation the right to promptly reduce rates competitively.

In the cattle business as well as in other pursuits we use, and feel we must have, transportation both by truck and by railroad. We think it is commonsense to allow railroads every right to defend themselves in the struggle for business.

Much of our livestock is produced in areas remote from the densely populated sections. We need the economy and the dependability which is inherent in the mass movement of goods for long distances by railroad.

That the obvious benefits to this proposed corrective legislation are not extended to cover all products is disappointing to the stockmen since the freight bill on all our inbound supplies is no less a factor in our operations than is the freight bill on our outbound livestock.

I wish it to be understood that we as cattlemen endorse the principle upon which this legislation is based but feel that it would be presumptuous as well as unnecessary to suggest to this committee the language by which it might be accomplished.

I appreciate your courtesy in allowing me to present this statement and I thank you for your time and attention.

The CHAIRMAN. Mr. May, I want to thank you and compliment you on your concise and clear statement to the committee on behalf of your association. Mr. Williams.

Mr. WILLIAMS. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. Mr. May, I gather from your statement that you would be against any form of regulating the hauling of livestock?

Mr. MAY. Mr. Rogers, I do not quite follow the question.

Mr. ROGERS of Texas. What I am getting at, Mr. May, is this: We had some truckers the other day who were engaged in hauling livestock that advocate putting the truckers under regulation, taking them out from under the exemption. I am from a cattle area, myself. To me that would be abhorrent because it would create a situation where the ranchers themselves would be put at a distinct disadvantage.

Mr. MAY. I personally would rather see the railroads free to compete rather than to see an equitable situation created between the two by applying restrictions to the truckers. Actually it would not work anyway in our country. They are not always directly competitive by any means.

In our whole area we truck to the railroads and then go onto the cars. It is not directly competitive at all.

Mr. ROGERS of Texas. You don't have a great deal of trouble with gypsy truckers out there.

Mr. MAY. No, they would not have the connections that would permit them to operate, and assurance of reliability is essential to the transportation of our product.

Mr. ROGERS of Texas. Thank you.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman. Can you give us figures, Mr. May, as to what proportion of the livestock is transported by motor carriers and how much by rail?

Mr. MAY. Mr. Younger, I would say that in Wyoming the major part of our livestock use both means of transportation from the time

they leave the ranch until they arrive at the marketplace. There are exceptions, of course, but most of us ship by truck to the railhead and then by rail to destination.

With the exceptions of those numbers of livestock that are going to local sales rings and in which case many of those go from there by rail to their final destination, usually in the Midwest. So the percentages, I would say 90 percent, in the course of their movement from Wyoming to their ultimate destination, travel by both means of transportation.

Mr. YOUNGER. Thank you.

The CHAIRMAN. Mr. Moss? Mr. Glenn?

Mr. GLENN. No questions.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. May, you have made a very interesting statement. You mention here the resolution that I assume is your authorization for being here. This resolution says as follows, "The legislation should also contain provisions for a proper relationship between live animal rates and dressed meat rates." Am I correct?

Mr. MAY. That is what it says, yes, sir.

Mr. DINGELL. That is part of the resolution of your organization?

Mr. MAY. That is part of the resolution of the American Cattlemen's Association, Mr. Dingell.

Mr. DINGELL. You are speaking on behalf of the——

Mr. MAY. The Wyoming Stock Growers Association.

Mr. DINGELL. Do you endorse that principle? Does your organization endorse that principle?

Mr. MAY. Yes, I think that that is a rather important thing. It has been in the past, it could very well be in the future.

Mr. DINGELL. Could you tell the committee why that is so?

Mr. MAY. Mr. Dingell, please understand that I am not a professional in the transportation industry but for a long time it was impossible for a packing or even a feeding operation to develop on any scale on the west coast because of the transportation cost, the tariffs between dressed meat and live animals was such that it was cheaper to put dressed animals from Chicago into Los Angeles than it was to ship live animals and slaughter them in Los Angeles or ship feeder cattle to the west coast and feed them and slaughter them there.

It was not until there was an adjustment in those rates that a packing industry to supply the west coast market was able to develop.

Mr. DINGELL. Can you tell me what that change was? Is that a statutory change?

Mr. MAY. That I can't answer.

Mr. DINGELL. Or was that simply a rate change?

Mr. MAY. I think perhaps a rate change. Whether it was handled by legislation or by regulation I can't answer.

Mr. DINGELL. Your point here is very interesting. We are coming down to a particular difference I happen to have with this bill. Can you tell me, sir, if you can, how you as a shipper of livestock will be protected from particular discrimination—not discriminations but particular rate differentials that exist or could exist or has existed in regard to dressed and live animals under H.R. 4700?

Mr. MAY. If I understand you correctly, Mr. Dingell, you would like to know what effect on me as a stockman any differential in rates between dressed and live animals, what effect it might have on me?

Mr. DINGELL. Yes.

Mr. MAY. As I pointed out, in the past the differential in those rates was able to prevent the development of a necessary packing industry on the west coast, at that very same time my animals were forced to go east, to the Midwest, I did not have a free choice of markets. It affected me as well as that industry.

Mr. DINGELL. You feel it is very important then that you should have that distinction between rates on live animals and rates on dressed animals, am I correct?

Mr. MAY. Not a distinction but an equitable situation so that it does not favor either one or the other.

Mr. DINGELL. As I read H.R. 4700, it exempts from minimum-rate regulations shipments of livestock and also of agricultural commodities, I assume dressed meats. In other words, these are no longer subject to regulations by the ICC as to minimums and becomes subject simply to bulk rates to be fixed by the shipper subject only to the prohibition of the antitrust laws.

How will you be protected under this arrangement? This is what I am trying to see. You have raised a point here which I think is very important and you are endorsing a bill here which purports I think in your statement to do one thing but which in fact I think may be doing something different and which may have a destructive impact upon your particular business or any other stockman.

Mr. MAY. Sir, you are suggesting that the end result of a rate reduction might ultimately work to my disadvantage because——

Mr. DINGELL. I am not making that suggestion at all. The suggestion I am making is that under this bill, as I read it, there is nothing which requires the distinction which you feel is essential to your protection and that is a distinction between the rates on dressed livestock and on livestock on the hoof.

Mr. MAY. The suggestion of the resolution, sir, is that it should contain that distinction.

Mr. DINGELL. There is nothing of that kind in the bill at this time as I read it.

Mr. MAY. That is why the suggestion that the legislation should contain this provision was put in the resolution.

Mr. DINGELL. Let me ask you this question. If that distinction is not inserted in the bill do you support the bill without the distinction between dressed livestock and livestock on the hoof?

Mr. MAY. I think the statement in the first pargaraph is that I want to express our support in general for the proposals contained in H.R. 4700.

Mr. DINGELL. I recognize that. But the bill does not have the provision which you say it should have. What I am asking you is, Do you indorse that bill without the provision which you feel it should have with regard to the distinction between packaged and dressed animals and livestock on the hoof.

I am not trying to trap you. I think it is a very important question that you should consider for your own protection as well as on behalf of the people for whom you appear today.

Mr. MAY. Let me go to the paragraph in the next to the last page in which I state—

> I wish it to be understood that we, as cattlemen, endorse the principle upon which this legislation is based but feel that it would be presumptuous as well as unnecessary to suggest to this committee the language by which it might be accomplished.

Now, I have never been in this town before and I have never done any of this sort of thing. The point I wish to make, Mr. Dingell, is that I have assumed, with certain reservations, that the gentlemen involved in the lawmaking in this country, although the wheels grind exceedingly fine and slowly at times, are qualified to do the job and if a problem is presented to them which requires legislation, eventually they will come out with a bill pretty well trying to anticipate the problems involved and with the best solution that they can arrive at with the necessary compromises inherent in that system.

Mr. DINGELL. Let me say you may also sometimes be disappointed in that, sir.

Mr. MAY. I feel that I must accept what are presently points that I might find disappointing in the legislation or to refute it as a whole. I don't feel that a bill that would accomplish something, particularly in Wyoming, which has been in a tough spot over the years from the standpoint of transportation, that I should have to wait until the day that a bill was proposed with language that I would find perfect and then dash to Washington and say this is it—either I misunderstand the system——

The CHAIRMAN. I think you have made your position very clear.

Mr. DINGELL. I respectively have to disagree with the chairman. I will be very truthful. I am opposed to the legislation. I think it is going to create rate wars and create havoc in transportation. But to go further, you say here the legislation should also contain provisions for its proper relationship to live animal rates and dressed meat rates. Do you feel this is very important to your business?

Mr. MAY. I think so. It must be understood that this is the American Cattlemen's resolution.

Mr. DINGELL. This is in your statement and I assume you indorse that principle.

Mr. MAY. I certainly do.

Mr. DINGELL. Now we come back to our main point. I want to know, and just as briefly as you can tell me, if you don't get in this bill the distinction between live animal rates and dressed meat rates, will you indorse the bill?

Mr. MAY. Personally, yes.

Mr. DINGELL. But you have indicated that you feel that failure to include that would be extremely destructive to the livestock men in the country. Is that correct?

Mr. MAY. I think that abuses of the situation could end in some problems. However, the situation that exists today with other means of transportation is not the same as that referred to in that statement about the occurrence on the west coast, the railroads were the only means, at that time, of practical transportation of livestock.

We are faced here with the permission to reduce rates. Now for one means of transportation or the other to reduce their rates in such a way as to wind up with an inequity between live and dressed meat

is not quite the same as to be in a position of one carrier raising one rate and lowering the other with the idea of creating a geographical advantage to one segment of the industry. We are faced with just lowering rates.

Mr. DINGELL. My objection to the bill is that it authorizes switches in rates, changes in rates which might very well affect the economic interest in different parts of the country or might conceivably have a very strong effect one way or another on different segments of the transportation industry.

It is my feeling that this will lead us to chaos. Now you pointed out today one particular element in this bill which concerns me. What I want to know is how can we put into a bill which says we are going to eliminate minimums on all commodities a particular saving which says we are going to have a minimum on all commodities but we are not going to have it on livestock and on meats, dressed meats?

Now this will remove the livestock men from the bill which I think would be a bad thing and would be a discrimination against your industry. Now how can we report out a bill of this kind which is going to have this kind of effect upon your industry?

Mr. MAY. Mr. Dingell, you are not suggesting that you feel that I indicate that we want minimum rates to remain on livestock?

Mr. DINGELL. You indicate that you wanted a distinction between rates on livestock and rates on dressed meats. I indicate under this bill this is not requirement that such distinction be continued.

Mr. MAY. I quite agree with you. I think in their wisdom the American National Cattlemen's Association suggested that it be included.

Mr. DINGELL. And you endorse that position?

Mr. MAY. Yes, I think it would be wise.

Mr. DINGELL. But we didn't have it in this bill and I conceive of no way we can get it into the bill without destroying the fundamental philosophy of eliminating minimum rates.

Mr. MAY. I will buy the bill without it, that if it can be included practically I think it would be wise. Maybe it is something that may not arise, may not become a problem. If it does then perhaps it can be dealt with.

Mr. DINGELL. If it becomes a problem you are liable to come back to Washington and go through it all over again.

Mr. MAY. I should enjoy it; I will be more familiar with the town.

Mr. DINGELL. Thank you.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. I thank the gentleman for his statement. I understand you are a rancher out in Wyoming. I happen to be a farmer in Minnesota. It is very possible that you, like myself, get very confused over some of these technical details.

As to the suggested amendment that is required your very good and able Congressman will likely make any correction necessary.

Mr. MAY. Thank you very much.

The CHAIRMAN. Thank you very much, Mr. May, for your statement. We are pleased to have you with us.

Mr. MAY. Thank you very much, gentlemen.

The CHAIRMAN. The committee will adjourn until 2:15. I think that the legislation before the House will be concluded by that time.

(Whereupon, at 12 noon the committee was adjourned to reconvene at 2:15 p.m. the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

We regret it was necessary to delay the hearings this afternoon because of the vote in the House that was just concluded. We should be permitted and will be permitted to proceed then during the afternoon without further interruption.

The first witness will be Capt. A. C. Ingersoll, Jr.

Mr. Ingersoll, I believe you are chairman of the executive committee of the Common Carrier Conference of Domestic Water Carriers.

STATEMENT OF A. C. INGERSOLL, JR., CHAIRMAN OF THE COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS

Mr. INGERSOLL. Yes, sir. Thank you, Mr. Chairman.

I have a prepared statement which I would like to submit for the record, and to save the committee's time I will skim through it and hit the high spots.

The CHAIRMAN. Your statement will be included in the record at this point and you may proceed as you desire, Captain.

(The statement referred to follows:)

STATEMENT OF A. C. INGERSOLL, JR., CHAIRMAN OF THE COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS

My name is A. C. Ingersoll, Jr., and I come before you as a representative of the Common Carrier Conference of Domestic Water Carriers, a group of 30 independent common carrier companies serving the Great Lakes, the coastwise and intercoastal trades and the inland rivers. I am chairman of the executive committee of this conference.

I would first like to thank the committee for the opportunity to appear before you. In your extensive and very fair hearings last year on these proposals for reform of transportation policy, we developed a careful, factual record for your consideration. In the interim period since those hearings closed, the water carrier industry has done a lot of thinking and a lot of research in an attempt to be helpful in developing a proper record for this committee. As you know from our testimony last year we sincerely believe that the passage of this legislation will mean the end of domestic water carrier service. I am perfectly aware that this committee has no intention, as the Chairman stated, of passing a bill which would seriously damage the water carriers. However, I feel I should stress once again our sincere belief that passage of this bill will be disastrous to the industry I represent and the consuming public we serve.

Faced with such a possibility, you can be assured that this testimony represents our best efforts, that we are not here taking your time on a matter that is trivial. We seriously believe that benefits to the public of low-cost water transportation and the benefits which come from the competition we provide to the railroads which produce so-called water-compelled rail rates are in jeopardy.

I come now to the gist of the new material which we would like to present for your consideration. I believe you will agree that the main thrust of the complaint of the railroads is that the Interstate Commerce Commission has continually interfered with their managerial discretion in reducing rates. The railroad industry, through its able publicists, has gotten this message across to almost everyone in the country. It is echoed in the President's Transportation Message for example. The President's Message said last year:

"The management of the various modes of transportation is subjected to excessive, cumbersome, and time-consuming regulatory supervision that shackles and distorts managerial initiative."

By stressing what is called "a chaotic patchwork of inconsistent and often obsolete legislation and regulation," the message strongly supported the serious view taken by the railroads of interference by a governmental regulatory body with the proper functioning of the market place. The Secretary of Commerce, Luther H. Hodges, went further and characterized the regulatory philosophy in these terms:

"The long-range consequences of such action are predictable—a smothering of carrier initiative and a highly regimented, unimaginative, uncoordinated national transportation policy."

The chairman of the Chicago and North Western Railway, Mr. B. W. Heineman, complained vigorously of the refusal of the Interstate Commerce Commission to allow him to reduce rates. He complained "that the Commission is using its present minimum rate regulation power to allocate business between the existing modes of transportation rather than relying on the forces of competition to do that allocating. This is the heart of the controversy."

Mr. Heineman went further and said, "The history of regulation of minimum rates in this country is a disgrace and has brought the railroads in this country right to the point of bankruptcy."

Mr. D. W. Brosnan, president of the Southern Railway, has publicly promised a billion dollars in rate savings if the minimum rate power is removed. This is a very strong statement and has been given very wide attention throughout the country. A billion dollars in savings in freight rates is not to be taken lightly.

Mr. Brosnan said in his testimony:

"It is significant to me, and I feel it will be significant to you, that we are finding it much harder to reduce a rate on a single commodity on a single railroad than experience has shown it to be to increase rates on all commodities on all railroads. Any time, in this country of ours, when it become more difficult to lower prices than it is to raise them it is obvious that changes should be made."

Mr. Jervis Langdon, president of the Baltimore & Ohio Railroad, thought that the restraint of the Interstate Commerce Commission on competition was so great that Government ownership of the railroads had become a serious prospect.

"If a public body such as the Interstate Commerce Commission is properly charged with telling the railroads (and other modes of transportation) that the lower rates they propose on the basis of economics are not competitively justified and will attract too much business—a public body that of course assumes no responsibility for the actual results—then the time to turn the entire railroad industry over to the Government has come. In that event the Government would at least be directly accountable."

These are strong words. "Relieve us of this intolerable burden of Government interference or take us over." Every member of this committee should be properly concerned with the railroad problem if this is the shape of it. Mr. Langdon went on to complain that "the Interstate Commerce Commission had been concerned with making sure, through its use of the minimum rate power, that each means of transportation got its fair share of the traffic regardless of the economics."

"A regulator concerned primarily with fair share and the safeguarding of certain competitors instead of competition itself is superfluous and should retire from the scene."

In direct response to these urgent arguments of the railroad industry, you have before you a bill which would in effect deregulate the railroad industry on bulk traffic—the heavy movements of coal, grain, fertilizers, ores of all kinds, sulfur, and like commodities, which make up 70 percent of the traffic of the railroads.

Deregulate the railroads on bulk commodities, so the argument runs, and the Interstate Commerce Commisssion will stop holding up the rates to protect the competitors of the railroads. The public will save a billion dollars a year in freight rates.

This is what the railroads have told you and this is why you are considering legislation to free bulk commodities from minimum rate regulations.

Now it has seemed to us that this record would not be complete without evidence as to what the Interstate Commerce Commission has in fact done in the past 4 years since those committee recommended the last change in the rate-making rule in the Transportation Act of 1958.

If it has brought the railroad industry close to bankruptcy and Government ownership, if it has caused the American public to pay a billion dollars more than necessary for freight service; the record should contain, at least in sum-

mary form, the decisions of the Interstate Commerce Commissison which have brought about this dire situation.

This is no easy task. Indeed I may say parenthetically, that if my associate in Federal Barge Lines, Mr. Erwin Strobel, had not broken his ankle shortly after Christmas, the enormous amount of skilled labor required to construct a record of this kind would not have been available. The Interstate Commerce Commission does not issue an annual box score on who won the rate cases. There are hundreds of feet of filing cabinets containing decisions of the Commission. These decisions speak for themselves. The railroads can say that they mean their industry is being forced into bankruptcy by them and can cite a few cases which they say are representative to convince you. The water carriers can deny this allegation, and you can choose whose word to take. But the great mass of decisions stand there at the Commission like an unclimbed Mount Everest. Up to now it has defied analysis and has forced all of us to talk in terms of theory and generalities.

Al Smith used to say, "Let's look at the record." I am going to take you through 4 years of the record and ask you to draw your own conclusions as to the need for this legislation. For the first time to my knowledge a box score of the hits, runs, and errors of the transportation indusry has been compiled.

The record is limited to bulk commodities, because your legislation is so limited. The nonbulk commodities are another story, but you are not proposing legislation that would affect nonbulk commodities, hence we will not deal with them.

I have two charts here.

CHART I.—*Actions of the Suspension Board of the ICC on protests against rail tariffs on bulk commodities*

	1959	1960	1961	1962
Freight tariffs filed by all carriers	179,047	174,904	187,828	176,273
Suspension Board cases against tariffs of all carriers	4,156	3,334	3,513	3,734
Percent	2.3	1.9	1.9	2.1
Railroad freight tariffs	50,358	59,835	47,911	48,126
Suspension Board cases against all railroad freight tariffs	866	864	820	745
Percent	1.7	1.4	1.7	1.5
Suspension Board cases against rail tariffs on bulk commodities only	125	154	118	106
Suspension Board cases where rail rates were allowed to go into effect without suspension or investigation on bulk commodities	79	80	55	86
Number of cases where rail rates were suspended or investigated on bulk commodities	46	74	63	20
Percent	.09	.12	.13	.04

Now we have the shape of the problem. You are considering legislation to deregulate bulk commodities because the railroads claim the Interstate Commerce Commission has interfered with the managerial judgment of the railroads in lowering rates. They actually interfered in 46 cases in 1959, 74 in 1960, 63 in 1961, and only 20 in 1962.

This does not sound like a lot of cases, but they may be very important cases completely supporting the railroads' claim that the Interstate Commerce Commission has brought the industry to the brink of bankruptcy and Government ownership, and cost the public an unnecessary billion extra dollars, as claimed.

Let us see what the cases were, who protested them, and what happened to them, once the Interstate Commerce Commission decided to suspend or investigate.

CHART II.—*Disposition of cases on bulk commodities*

	1959	1960	1961	1962
Number of cases where rail rates were suspended or investigated on bulk commodities	46	74	63	20
These had been protested by:				
Railroads only	8	8	3	1
Water carriers only	6	14	10	3
Motor carriers only	1	10	9	2
Noncarriers only	15	25	24	9
Mixed	10	10	10	3
ICC own motion	6	7	6	2
Unknown	0	0	1	0
Total cases	46	74	63	20
Disposition of cases:				
On appeal the ICC dismissed	12	13	5	[1] 2½
Rates withdrawn by proponent railroads	12	23	13	5½
Total remaining cases	22	38	45	12
Some were consolidated or settled out of court, leaving for hearing	17	22	27	9
Decisions reported by ICC:				
Rates found lawful	12	8	[1] 13½	0
Rates found unlawful:				
(*a*) Involving regulated carriers	4	10	8	1
(*b*) Involving competition with unregulated water carriers	1	2	[1] ½	0
Total rates found unlawful	5	12	[1] 8½	1
Cases still pending	0	2	5	8

[1] The fraction ½ is used to denote a situation where the ICC found a proposed tariff partially lawful, partially unlawful.

Now we are getting to the heart of the matter.

I would like to make some comments on these charts before moving on to an examination of the cases.

1. You can see that the railroads were complaining about the rate changes of other railroads.

2. You can see that the water carriers' complaints are not the largest group.

3. You can see the growing number of shipper complaints in these 4 years which reflect, we believe, the fact that the rate-cutting campaign of the railroads has increased the amount of discrimination in the rail rate structure.

4. A substantial number of rates were withdrawn before trial. Were these cases where the railroad's business initiative was stifled and the railroad gave up ? Some of the rail testimony would have you believe that the rail rate people are a discouraged group of people and they give up easily. This has not been our experience with them. There is, moreover, a perfectly logical explanation why a railroad would publish a rate, then withdraw it after a protest. They might themselves be convinced that the rate was not justified, on examination. Most ratemaking is based on a salesman's desire to get the traffic, and a rate is often published with no thought to its legality or even to its profitability to the railroad involved. On many a rate, published to please a customer, a railroad is delighted to be let off the hook by someone else's protest.

5. But more important, in the complex work of traffic it is often very difficult to determine just what rate is a right one. Shippers are often not too helpful. "If we publish such and such a rate will you oppose it?" a railroad solicitor often asks. The answer is often "maybe yes, maybe no." But a published rate is another matter. A railroad then can count the protests, read them, and determine what rate would fit the situation, withdraw his original rate and publish a new one which makes everyone happy.

Where there are dozens of shippers affected by a rate change, this is often the only way of getting a reasonable consensus. So, far from being an example of arbitrary interference with the managerial process, the complaint and suspension process is a part of the exercise of managerial discretion in finding a new rate level that will not seriously discriminate against any of a railroad's customers. Transportation companies seldom go out of their way to publish a

rate that will make it impossible for their shippers to compete and hence deprive themselves of traffic. But market relationships where several railroads and dozens of shippers are concerned are so complex that the suspension process is a useful tool in the development of a fair rate structure.

6. One of the noisiest complaints of the railroads has been the claim of unequal treatment because many of the water carriers that handle bulk traffic are unregulated while the railroads are regulated. The record of cases involving unregulated water carrier competition where the rail rates were found to be unlawful is: in 1959, 1; in 1960, 2; and in 1961, one-half case.

This is the statistical record of ICC interference with the railroad industry's managerial judgment on water competitive bulk traffic since the passage of the 1958 Transportation Act. Railroad bulk ratemaking was only restrained by the Commission as a result of protests from any source in 5 cases in 1959; in 12 cases in 1960, with 2 cases still pending; in 8½ cases in 1961 with 5 pending; in 1962, 1 case with 8 pending.

But even these may be very big cases fully warranting this legislative proposal to deregulate the railroads on bulk traffic to save them from Government ownership, bankruptcy, and all the other problems the railroad witnesses have talked about.

If we are to believe the testimony of the railroads, the cases we are about to examine and briefly summarize must be of a very serious nature to justify the nationwide campaign of publicity, the President's message, the efforts of the Department of Commerce and other Government agencies.

We must also be alert for that billion dollars in rate savings that Mr. Brosnan has been talking about, which he says could come from the elimination of ICC interference with rate reductions of the carriers.

1959

In 1959 there were five cases where the ICC ultimately prevented the railroads from doing what they proposed.

Three of the cases, two involving cement and one involving grain, were quarrels among railroads, not over the level of the rates, but over routing of the traffic. There was no threat of diversion of traffic from the railroads. There was no prospect in these cases for savings to the public if the Commission's minimum rate power were removed, because the rate levels were not at issue.

RAIL VERSUS RAIL

1. I & S 7121—rail versus rail—routing restrictions

A trunkline railroad in the South sought to cancel a routing on cement that included a short-line road. The big road just wanted to stop short-hauling itself and blamed a disagreement over divisions of the rate.

Division 2 of the Commission stated that the absence of an agreement for divisions did not constitute a lawful basis for canceling routes being used by the public and maintained the routing.

2. I & S 7227—rail versus rail and market competition

Grain, Nebraska to Western States

Hoping to encourage the movement of Nebraska grain through to Chicago on its own line, the northwestern railroad sought to cancel its participation in roundabout rail routes that let Nebraska grain move to off-line destinations.

Division 2 of the Commission found that the continuation of the routes was in the public interest and the proposed cancellation would be in violation of an order in a prior case to cure market discrimination.

3. I & S 7229—rail versus rail—routing restrictions

This was another squabble between a trunkline and a short line over routings on cement for the Federal highway program.

Division 2 said the continuance of the routes would benefit at least the protestants and their customers and that cancellation would not be in the public interest.

We now come to the two cases involving a competing mode. In one of these cases, involving bulk traffic but moving by regulated motor carrier, the Commission found the proposed rail rates "would constitute a rebate and discrimination prohibited by the Interstate Commerce Act."

4. ICC 33277—rail versus truck

Tank car allowances in official territory

Seeking to regain some short-haul traffic that had been lost to competing tank truck carriers, certain eastern railroads published tariffs to pay shippers a rebate on three commodities—alcohols, solvents, and sulfuric acid, when these commodities were shipped via rail in tank cars.

The tank truckers opposed, the manufacturing chemists supported the proposal.

Division 2 of the Commission ordered the tariffs canceled as a rebate and forbidden discrimination.

In the only case in 1959 where the managerial discretion of the railroads was interfered with on bulk commodities, involving water competition, the issue was discrimination. The principal protestants were coal producers and commercial dock operators. Their protests were supported but not initiated by the water carriers. And the Commission in its decision didn't condemn the practice: It only said the rail tariff would have to be reworded to fit.

5. I&S 7274—Rail v. Rail and Water

Coal—Indiana to Milwaukee, Wis.

A railroad proposed a kickback to a volume dealer in all-rail coal in Milwaukee. The kickback was to offset the cost of further distribution of coal within the city limits. The proposal was intended to help the coal dealer compete with coal dealers distributing rail-water coal from the Milwaukee docks.

Division 2 of the Commission found the kickback to be an unlawful discrimination unless the privilege was also extended to all dealers in the switching district.

The year 1959 was hardly a year when the interference of the ICC with railroad managerial discretion on bulk commodities could be said to be pushing the railroads into bankruptcy; nor was there any prospect of substantial savings to the public if the ICC's decisions had gone the other way. You will search in vain for a single case where the inequality in regulation affected the routing of the traffic, and in not one case did they exercise their minimum rate power to restrain a railroad from meeting bulk exempt water competition.

During the same year, in ICC 19856, the ICC permitted eastern railroads to make substantial reductions in grain rates from central territory to port cities on the eastern seaboard permitting them to compete with the St. Lawrence Seaway. In ICC 21084, over protests of Oklahoma producers, the ICC allowed a reduction in lime rates. In ICC 17794, over protests from other railroads that a reduction would destroy the general export rate structure, a railroad operating into Morehead City, N.C., was allowed by the ICC to reduce its rates on sulphate of ammonia. These are typical of the long run of cases where the ICC allowed the managerial discretion of the railroads to be exercised, despite protests of shippers and other railroads.

1960

In this year, there were 12 cases on bulk traffic where the Commission interfered with railroad managerial discretion.

This is an interesting year. Four cases involved the use of the minimum rate powers so much in controversy here. Two involved cases where the railroads were charging too much. The others involved the issue of discrimination.

Who were involved in these controversies on bulk traffic? Three involved quarrels among the railroads; two cases were disputes between railroads and shippers; two were rail against truck; two were quarrels between shippers; in one case the ICC itself challenged a railroad; only two involved railroads against water carriers.

The details are as follows:

1. I&S 7337—Rail v. Shippers (increase disallowed)

Increase in wharfage charges at Texas City, Tex.

This case involved a dispute over an increase in wharfage fees charged by a railroad for the use of its dock by oil barges and tankers.

After reviewing the cost of rebuilding the wharves, the operating expenses, and the railroad income after taxes from fees paid by oil companies for the use of the wharf, Division 2 of the Commision found the increase in fees unreasonable.

2. I&S 7443—Rail v. Water

Phosphate rock from Florida to Norfolk, Va.

Phosphate rock is shipped from Florida to Norfolk, Va., and the surrounding area, where it is used in the manufacture of fertilizer. Some of the manufacturers, located on the waterfront, ship by water. Other plants, located away from the waterfront, ship all-rail.

The railroads reduced the rate, which was protested by the water carriers. After reviewing the history of the traffic to all the plants, and the many changes in the railroad rates over the past years, both increases and reductions, the Commission concluded that if the railroad hauled all of the traffic to all the plants at the reduced rate, its net revenue would be less than that earned with the present rate and volume of traffic.

Division 2 of the Commission exercised its minimum rate power and ruled that the rate was "less than a minimum reasonable rate." On appeal by the railroads the district court upheld the Commission's decision.

3. I&S 7424—Rail v. Rail

Coal from Lynnville, Ind., to Chicago, Ill.

The Chicago & Eastern Illinois Railroad in an effort to develop some coal traffic on its route to Chicago, constructed truck-to-rail coal transfer facilities in southern Illinois, near a coal mine, and arranged with a motor carrier for joint rates and service from the mine. This was the first such arrangement on coal.

Six other coal hauling railroads protested to the Commission that if this arrangement were approved, other coal mine operators would try to make similar arrangements, resulting in a breakdown of the railroad rate structure on coal.

Division 2 of the Commission found the proposal unlawful because if other railroads were forced by competition to enter into other joint rail-motor rates from other mines, it would result in the dissipation of railroad revenue and a serious disturbance of a reasonable railroad rate structure.

4. I&S 7410, 5. I&S 7461—Rail v. Regulated Motor Carrier

Allowance for unloading cement from railroad cars.

This case involves competition between railroads and regulated motor carriers over a railroad allowance to shippers for unloading bulk cement. The trucks were specially designed for bulk cement, and equipped to automatically unload into the receiver's storage. Railroad cars are not so equipped. The rail and truck rates were approximately equal. The railroads lost some traffic.

The railroads proposed to pay the receivers unloading allowances on bulk or packaged cement in order to compete with the truck service. Division 2 of the Commission found the allowance on bagged cement unlawful, but permitted an allowance on bulk cement of not more than 35 cents per ton.

On appeal by the motor carriers the district court sent the case back to the Commission to study the revenue-cost relationship in the rail service.

6. ICC 33409—Shipper v. *Shipper (Discrimination)*

Grain from Kansas City, Mo., to Iowa and Nebraska

This was a highly technical quarrel between shippers over rates, rules, and transit privileges on wheat and flour published by one railroad. One large miller seemed to gain undue preference.

The Commission declined to suspend but ordered an investigation.

After a lengthy investigation division 2 found undue prejudice to competing shippers and ordered the tariff canceled.

7. I&S 7456—Shipper v. *Shipper (Discrimination between United States producers and Canadian producers)*

Rock salt from Canada to the United States.

The Canadian National Railways and its United States subsidiary published reduced rates on Canadian salt to United States markets. The rates were protested by American producers who had not received like reductions from their mines to the same markets.

Division 2 of the Commission concluded that selective rail rate reductions that favored Canadian producers would result in undue prejudice to U.S. salt producers and refused to approve the suspended rates unless like rate treatment was given to United States producers by the Canadian railroad.

8. I&S 7429—ICC v. *Rail (Discrimination)*

Fertilizer materials from Illinois.

This case involved liquid fertilizer in tank cars.

The Commission had previously granted permission to the railroads to reduce rates from Illinois into the Southeast while holding up the rate to Louisville, an intermediate point. But the ICC had attached a condition: that the rate to Louisville should not be higher than the total of the rates from the Illinois origin to any farther destination in the Southeast and back to Louisville.

The railroads published a tariff resulting in charges from the Illinois origin to Louisville higher than the sum of the rates from Illinois origins to more distant Kentucky points and back to Louisville.

The Commission suspended the tariff and required the railroads to conform to the order.

9. ICC 33579, 10. ICC 33408—Shippers, Department of Agriculture and Railroads v. *Railroads (Discrimination against another railroad)*

Grain to Duluth and Minneapolis, Minn.

Railroads hauling grain into Minneapolis and Duluth in competition with trucks published reduced rates but only applicable on traffic that moved beyond Minneapolis or Duluth by truck or water.

On protest by boards of trade, Department of Agriculture, and outbound railroads the Commission ordered the discrimination against the outbound railroads removed and the inbound rates made to apply regardless of how the traffic moved beyond the terminals.

11. I&S 7486—Rail v. *Rail*

Grain from Kansas City to Chicago.

A railroad published a specially reduced rate to Chicago with special transit privileges at one elevator. The rates were protested by eight other railroads and various grain dealers.

Division 2 reviewed the evidence relating to competition and of services and costs and concluded that the rates were not compensatory and were unreasonable.

12. I&S 7498—Rail v. *Barge and Market Competition*

Coal from Fulton County, Ill. to Minnesota.

Coal is transported to Minneapolis by rail-barge routes from southern Illinois and western Kentucky. No coal is barged from Fulton County, Ill.

Two railroads selectively reduced their rate to Minneapolis from Fulton County but not from other coal mines in southern Illinois and not to other towns on the route to Minneapolis.

Division 2 of the Commission found the rates below the out-of-pocket cost of performing the service and were unreasonable.

We leave to you to decide whether the actions of the ICC at the institgation of shippers, motor carriers, water carriers, other railroads, and the ICC interfered improperly with the managerial discretion of the railroads. The Commission's minimum rate power was exercised four times on bulk rail traffic, twice in competition between railroads, and twice in cases involving rail-water competition. The Commission found in one that the railroads were making more money handling part of the traffic than they would if they knocked out the water competition and captured all the traffic. In the other case, the water competition was not for the traffic involved, but on traffic from different origins entirely.

Would the railroads be more healthy than they are today if the cases had gone the other way? Is there justification for the claim of a billion dollars a year in savings for the consumers in this record?

In 1960, also, as a sample of the great majority of cases where protests against rail tariffs were in vain, the ICC in ICC 23727 declined to interfere with a railroad's refusal to allow special cars hauling soda ash to be hauled "fishyback" by water carrier despite protests of a shipper and the water carrier.

Another sample: In ICC 22672, the ICC overruled shipper protests against rail discrimination on reduced volume rates on asphalt from southwestern points.

CALENDAR YEAR 1961

In this year there were 8½ cases where the ICC interfered with the managerial discretion of the railroads on bulk traffic.

The breakdown is as follows:

Three cases involved unjustified increases.

Two involved port competition and rail versus truck, essentiallly a discrimination case.

One was a quarrel among the railroads..

One involved the preservation of a reasonable commodity rail rate structure where producers, consumers, and other railroads complained about a single selective rate cut by one railroad.

One of these was a dispute between a regulated water carrier and the railroads.

Only one involved rail competition with exempt water transport; that was the celebrated Southern Railway grain rate reduction. In this case, now on appeal to the full Commission, the Division allowed the rates on the "Big John" aluminum cars, but disallowed the application of the same rates on ordinary boxcars.

Here are the details on the cases:

1. I. & S. 7564, 2. ICC 33788—Port Preference and Rail v. *Truck*

Grain for export: The railroads reduced the export rates on grain from Oklahoma and Texas to Houston and three other Texas ports, but not to Corpus Christi, Tex.

Railroads justified their selective action by claiming truck competition was controlling at the ports concerned, but not at Corpus Christi. Although acknowledging the presence of the truck competition, Division 2 of the Commission rejected the rates as prejudicial to Corpus Christi and preferential to the other Texas ports.

3. I. & S. 7573—ICC v. *Rail (increased rates)*

Increased rates on sulfur to Texas ports for movement beyond via water carriers: The railroads selectivity increased the rates to the ports for beyond movement by water on refined sulfur more than the maximum increase authorized in prior proceedings involving general increases.

Division 2 of the Commission concluded this was unreasonable.

4. I. & S. 7592—Rail v. *Rail*

Reduced handling charges on iron ore at docks: A shipper-controlled railroad reduced handling charges on iron ore at upper lake docks. Other railroads protested.

Division 2 of the Commission reviewed the effects of rail rate changes upon the total volume of traffic and upon the prices of iron ore and concluded that the proposed reduction would reduce the revenue of the railroads by $3.5 million without any economic gain to them and rejected the proposed change in rates.

5. I. & S. 7595—Market Competition

Liquid petroleum gas from Oklahoma City to Memphis, Tenn.: One railroad selectively reduce the rate from one origin to one destination.

Division 2 of the Commission rejected the isolated single-rate reduction as unreasonable and disruptive to an orderly related rail rate structure that had been developed between various producers and consumers and other railroads.

6. I. & S. 7681, 7. I. & S. 7682—Shippers v. *Rail (increased rates)*

These cases involved increased rail rates to Louisiana ports for water movement beyond and were protested by a domestic coastwise water carrier and shippers.

The Commission rejected the increases.

8. I. & S. 7582—Rail v. *Regulated Water Carrier*

Insecticide in tank cars, New Jersey to Houston, Tex.: This case involves reduced rates on agricultural insecticides in bulk in tank cars. Seatrain Lines protested that parity of all-rail rates with rail-water rates would lead to a rate war. (Although this commodity is eligible for exemption if moved in bulk by water, in this case it did not and both the rail and water routes were regulated.)

Division 2 of the Commission stated that such a pattern of rate reduction was a destructive competitive practice forbidden by the national transportation policy.

9. I. & S. 7656—Rail v. *Barge and Truck (minimum rate power involved)*

Grain in multiple cars—River crossings to the South: The Southern Railway made a two-thirds reduction on grain when loaded in new aluminum jumbo hopper cars in multiple-car lots. Other railroads followed with the same reductions in rates when loaded in conventional boxcars in multiple-car lots.

Division 2 of the Commission approved the rates on five-car lots in jumbo cars, but exercised its minimum rate power and rejected the boxcar rates of the other railroads as not compensatory. (Case pending on appeal to full Commission.)

What can we make of this 1961 record that is pertinent to this legislation?

The Commission exercised its minimum rate power on bulk traffic four times, three times in competition between railroads and once in rail-water competition where both parties were regulated.

In only one case, the *Southern Grain* case, is it even alleged that inequality in regulation is a burden. This case is not settled yet, but the Southern is ahead so far. The only "burden" has been the time and expense of the litigation, and not one of the hundreds of parties involved suggests that this case is not of critical importance.

In three other cases the railroads were restrained from rate increases plainly designed to discourage combination rail-water movements.

During this 3-year period when there were protests against 397 rail freight tariffs on bulk commodities, the Commission exercised its minimum rate power in only 8 cases: 5 involving competition between railroads, 1 involving regulated water transport, and only in 2 cases involving exempt water competition.

In 1962, as the charts show, very few cases have yet reached the decision stage. But the same pattern appears:

Twelve cases were marked for hearing; one was settled before hearing; four were consolidated into two, and in the end, nine cases were tried.

Five cases concern market competition and/or competition between railroads.

In one case the ICC challenged two railroads' demurrage rules.

One case involved rail-truck competition; both adversaries are regulated on bulk traffic.

One case, still pending, involves a proposed rail reduction apparently justified on "phantom" water competition.

One rail-water case is proposed by the Examiner to be settled by approving those rail rates above out-of-pocket cost and disapproving those below.

(1) *I. & S. 7807—Market competition and rail versus rail competition*

In this case three railroads sought to make rates on corn to move from the farm through Danville, Ill., to the East on the same basis as through Chicago. The Chicago Grain Market objected. No other form of transportation was involved.

The Examiner's proposed decision rejects the technical method of publishing, but not the level of the rates.

(2) *ICC 34038—Market competition and rail-water competition*

Rail rate reductions on crushed stone from Massachusetts and Connecticut origins to Long Island for roadbuilding were investigated without suspension on protest by competing producers and water carriers who handled traffic exempt from the competing sources.

The Examiner proposes to reject some of the rates because below out-of-pocket cost and let others that were above out-of-pocket cost remain in effect.

(3) *ICC 34041*

A case on cement rates. Marked for investigation without suspension. Before hearing, parties agreed to a settlement. Case discontinued.

(4) *I. & S. 7839—ICC versus rail*

Two western railroads published free storage on grain in cars en route to Texas ports for export. ICC suspended the proposal on its own motion. No other parties opposed.

ICC rejected proposal. It was apparently only a device to avoid charging demurrage.

(5) *ICC 34099—Rail v. Rail & Market Competition*

Coal from Southern Railroad origins in Kentucky, Tennessee and Virginia to Southern Railroad destinations in North Carolina, Tennessee, and Virginia. Protested by other railroads and coal owners. Case pending.

(6) *I. & S. 7874*, (7) *I. & S. 7874–1—Rail-Water Truck Competition*

Trainload rates on corn from Ohio to New England to meet "phantom" water-truck competition via New York State Barge Canal from Lake Erie. (Two unsuccessful trips had been made by water carriers.) Toledo Board of Trade protested. Case still pending.

(8) I. & S. 7891, (9) I. & S. 7891-1—Market Competition

These two cases, consolidated into one proceeding, concern Canadian sulfur moving via Canadian railroads to various Illinois points. U.S. producers and their water carriers from the gulf coast protested these proposed rail rates because they were at the same level as the rail rates from U.S. gulf coast origins, although the rail haul from Canada is much longer. Case still pending.

(10) I. & S. 7914—Market Competition

Grain from Pittsburgh to the East. After considerable public agitation railroads published reduced rates from Pittsburgh to the East on the demand of a would-be flour miller desiring to locate in Pittsburgh. Buffalo milling interests protested. Case still pending.

(11) ICC 34189—Market Competition

Coal from Kentucky, Tennessee, and Virginia mines to Trion, Ga., an interior powerplant. Protested by competing coal owners. No intermodal competition. Case pending.

(12) I. & S. 7926—Rail-Truck Competition

Cottonseed oil. Tank car rates from Louisiana and Texas cotton gins to Texas ports for export, protested by tank truck operators. Case pending.

On this record, can anyone seriously contend that the elimination of the minimum rate power is overwhelmingly needed to save the railroads from bankruptcy and Government ownership, as claimed? Does anyone see where the elimination of this power can save the public a billion dollars in freight revenue? Is there an overwhelming showing that the ICC has arbitrarily held an umbrella over water carriers, as claimed, to prevent the lowering of rates by the railroads?

The study described to you this morning has taken a great deal of effort and is, so far as we know, completely new and unique. However, the ICC is scheduled to appear before you shortly, and it may be you will want to ask those witnesses to comment on our study. I have here the full findings of the ICC in each of these cases. I leave it to your judgment as to whether you want to include the text of these decisions in this record.

On the issue of who is winning the ICC rate cases on bulk commodities, which represent 90 percent of our traffic, I think the answer is very clear. The water carriers are not winning them.

Why then are we here to support a system that appears to do us so little good? Since important ICC decisions in recent years have begun to pile up against us, this question has been asked with increasing frequency throughout the water carrier industry.

We see the present situation as fluid, a period of questioning and adjustment. There is ready agreement throughout the entire transportation industry that clear standards for judging competitive rate disputes have not yet been hammered out. It is our faith that when they are hammered out, in the Commission and the courts, the standards will be fair to railroads, water carriers, and truckers. And if they are fair, we can live and prosper.

But if this system is to work, it must be impartial. The bulk exemptions are a genuine problem, inviting a cure. The President wants a cure. The railroads want a cure, and we want a cure.

In 1940, when water transport was brought under economic regulation by the ICC, certain bulk traffic was exempted from regulation on the grounds that it was not competitive with common carrier transport by rail or water.

This exception is still valid as to some large blocks of water traffic, notably oil, where the competition for heavy-volume, long-haul traffic is almost entirely with pipelines. One of the principal rail spokesmen told the Senate last summer that he could see no chance of returning any oil traffic to the rails.

But a great part of the bulk traffic on the water is now highly competitive, not only between rail and water, but within the water industry between common carriers and exempt carriers.

Although the record of the last 4 years' Commission action indicates a strong inclination to give the railroad the benefit of the doubt in meeting exempt competition, there still remain powerful handicaps to the efforts of the common carrier, by rail and water to meet exempt competition:

The exempt carrier's rate is secret.

He may change it at will.

He may discriminate.

He may rebate.

He may make term contracts for exclusive patronage.

His secret rate is doubly attractive to his shipper who enjoys an advantage thereby under the Robinson-Patman Act.

These advantages enjoyed by the exempt carrier distort the competition and weaken the common carrier system on which the country must mainly rely for the efficient and dependable transportation service so necessary to a highly developed economy.

This flaw in the system should be cured. What cure do we suggest? Last year we urged repeal of the bulk exemptions, one of the alternative solutions recommended by the President.

But Mr. Williams last week expressed the fear that under regulation, rates would go up. This view is sometimes based on the anticipation that under regulation, and enjoying the privilege of legal price fixing, the carriers would get together and raise rates.

We have studied this problem long and hard, and we think we have the answer. We now urge you to consider applying rate regulation to competitive bulk traffic while maintaining the present freedom of any one to engage in bulk transportation by water.

This would solve the problem of equality as far as the railroads are concerned. And leaving entry into bulk water transport as wide open as it is today would assure protection of the shipper's interest in full competition as a guarantee of low rates. If the existing carriers should get together under the immunity of the Bulwinkle Act and agree to raise rates, the door would be wide open for new entries to come into the business with competitive rates without having to prove public convenience and necessity.

Another group has a legitimate interest in this problem, those water carriers now operating in the exempt for-hire transport of bulk commodities. Their right to continue in this business and to expand their operations would be assured by the maintenance of the present right of any one to engage in bulk transport by water anywhere.

As we pointed out last year, not all bulk traffic is involved in keen intermodal competition. Oil transport by water is an outstanding example. No one would suggest that all traffic, whether competitive or not, should be regulated just for the sake of consistency. We therefore urge that the exemption now applying to water transport of petroleum and petroleum products be retained. The committee may think of other examples.

And as a continuing matter, there is already in the Interstate Commerce Act a paragraph (sec. 303(e)(2)) giving the ICC discretion to grant a special exemption on water traffic "not actually and substantially competitive with transportation by any common carrier." Because of the present existence of the broad bulk exemptions, this authority is now seldom used, but if the bulk exemptions should be repealed or substantially amended, this paragraph would provide for the exemption of any traffic as to which regulation would serve no useful purpose. The paragraph should apply to all water carriers.

Another aspect of this problem invites comment. There are in the water transport business very many small operators on whom economic regulation would impose an unwarranted burden of paperwork. Here again there is now in the act a paragraph (sec. 303(g)) providing a special exemption for very small operators. While exploring the feasibility of amending the bulk exemptions, the committee may wish to consider increasing the limits on this small craft exemption.

No discussion of this whole matter would be complete without mention of private carriage. Much has been said about the growth of private carriage, and alarm has been expressed in many quarters at the erosion of the common carrier system resulting from private carriers' using the exemptions to invade the for-hire transportation market for backhaul traffic.

The extreme suggestion has been made that private carriers should be confined exclusively to moving their own goods and should be barred entirely from participating in the for-hire transportation business. We reject that proposal. We believe that the person who moves his own goods in his own vessels should have the right to be in the transportation business generally. But the public interest in a sound common carrier transportation system requires that such combination operations be carefully supervised.

We therefore urge that in your possible consideration of extending economic regulation without entry control to bulk water traffic you consider that if a

person engaged in private carriage wished also to engage in for-hire transportation in order to enjoy the increased efficiency of a balanced movement, he should be on an equal footing with independent carriers by having both parts of his transport business subject to economic regulation.

We of course very greatly appreciate this opportunity to come before you once again. My summary can be made in one sentence: We urge you to adopt the President's alternative of extending regulation, but if you do not, we believe we cannot survive to perform our historic function of providing low-cost water transportation unless all the "existing laws against monopoly and predatory trade practices," particularly including the Robinson-Patman Act, are applied to the transportation industry.

Mr. INGERSOLL. We had the privilege last year in the hearings before your committee to make the views of the common carrier water carriers abundantly clear in respect to the legislation which is now before you as H.R. 4700. We said about everything that we thought was pertinent to say at that time.

I come before you now to offer some additional material that is new since last year.

We still believe that the passage of this legislation would be disastrous for independent water transportation in this country. We believe that the benefits to the public of low-cost water transportation and the benefits that come from the competition we provide to the railroads, which produce so-called water-compelled rail rates, would be put in real jeopardy by the passage of H.R. 4700.

My testimony today will be directed at what seems to be the main point of this legislation. The principal justification that has been advanced is the complaint of the railroads that the Interstate Commerce Commission has continually and without warrant interfered with their managerial discretion in reducing rates.

Mr. Heineman, the chairman of the North Western Railroad, said that "the Commission is using its present minimum rate regulation power to allocate business between the existing modes of transportation rather than relying on the forces of competition to do that allocating. This is the heart of the controversy."

I think that the question of whether that is true or not is in large measure the heart of this controversy.

Mr. Brosnan, president of the Southern Railway, has before this committee and before the public promised a billion dollars in rate savings if the minimum-rate power is removed. This is the net effect of the justification that is given to you—deregulate the railroads on bulk commodities, so the argument runs, and the Interstate Commerce Commission will stop holding up the rates to protect the competitors of the railroads, and the public will save a billion dollars a year in freight rates.

This is very strong language and invites some research, and this we have attempted to do since last year. We have looked to see what the Interstate Commerce Commission has in fact done in the past 4 years since this committee recommended the last change in the rate-making rule in the Transportation Act of 1958. This research is summed up in a couple charts I would like to show you,

Here on chart 1 is a record of 4 years of tariff publishing and objections on the part of the people who are dissatisfied with the rate publications.

All regulated carriers published 179,000 freight tariffs in 1959, 174,000 in 1960, 187,000 in 1961, and 176,000 in 1962. These have been protested by competing carriers of the same or different modes, by shippers, and by communities or other interest groups. The number of tariffs that were protested of these different forms of transportation amounted to around 2 percent each year of all of the freight tariffs of all carriers.

During those same 4 years railroads published 5,000, 59,000, 48,000, and 48,000 freight tariffs. About 1.6 percent of these railroad freight tariffs were protested.

It is notable that the proportion of the railroad freight tariffs that were protested is a little less than the general average. Railroad freight tariffs seem to be less objectionable to other people in the picture than the tariffs of other carriers.

Of these railroad freight tariffs that were protested about one-seventh were tariffs on bulk commodities which are proposed to be deregulated by this legislation. For this tabulation a "bulk commodity" is a commodity which is eligible for the water bulk exemption.

Out of those bulk tariffs protested by other railroads, by truck lines, by water carriers, by shippers, by the ICC, by communities, by everybody, the Commission let go into effect without any further argument, without any investigation or suspension, somewhere around half the protected tariffs during the first 3 years. Last year about 80 percent of them were allowed to go into effect without any further argument.

The number of protested rail freight tariffs on bulk traffic which were suspended or investigated or marked for suspension or investigation by the suspension board is 46 in 1959, 74 in 1960, 63 in 1961, and 20 in 1962. That is the size of this subject.

Now let us see what happened to those. Here are these suspension cases on rail freight tariffs on bulk traffic that were marked by the suspension board for suspension or investigation.

First, it is interesting to look and see who complained. Where did these protests come from? We hear a great deal these days that the Interstate Commerce Commission has become, to use the phrase of one prominent shipper, a "social security system" for the carriers instead of a guardian of the shipper's interests. It is notable that the principal source of protests is from noncarriers, from shippers and towns and chambers of commerce and what have you. During this 4-year period about 36 percent of the suspension cases on rail bulk tariffs were based on protests from noncarriers only. Railroads protesting each other's rates: 10 percent; all kinds of water carriers protesting rail rates: 16 percent; truck carriers: 10 percent; and 16 percent are protests of a number of different interests, shippers, competing railroads, competing water carriers, all combined to object to a freight tariff, and then 10 percent where the ICC, for some reason on its own, objected to a railroad freight tariff. That is how the suspension board cases are broken down as to where the protests came from.

Now what happened to these 203 cases the suspension board marked for investigation, with or without suspension? The defendant can appeal to a Division of the Commission, and on that kind of appeal 32½ cases were dismissed so that there was no hearing and no suspen-

sion and no investigation. This takes just a week for the ICC to decide whether or not to overrule the suspension board. After the appeal had been unsuccessful, but before the case went to a hearing, in 53½ cases the rates were withdrawn, the proponent railroad withdrew rather than go to trial.

Mr. YOUNGER. How do you get a half case?

Mr. INGERSOLL. This was a case where part of the tariff was found lawful and part of the tariff was found unlawful.

Mr. YOUNGER. They withdrew half the case and left half of it in when they withdrew?

Mr. INGERSOLL. Right. This is arbitrary, a few of them. It is kind of a 50–50 situation and I just said, well, we just call it a half.

There remained, then, after the appeals board had acted, and after the railroad had withdrawn the ones they did not want to try, 117 cases to go to trial. Some of them were consolidated, such as when a number of cases concerned the same kind of traffic, and some of them "settled out of court" by the parties before the hearing actually took place. In the end 75 cases on railroad bulk tariffs actually were the subject of hearings during these 4 years.

What happened in the hearings? Thirty-three and one-half cases were found lawful after a hearing; 15 are still pending. All of them in 1959 were settled: 5 of them found unlawful, 12 of them found lawful. In 1960, 12 were found unlawful, 8 found lawful, and 2 still pending. In 1961, 13½ were found lawful, and 8½ unlawful, with 5 pending. In 1962, one of them was found unlawful and eight of them are still pending. Of the ones found unlawful in the first 3 years. 22 involved competition with regulated carriers, such as between 2 railroads or between railroads and regulated trucklines or between a regulated railroad and a regulated water carrier where the exemption is not involved.

In those cases the existence of the bulk exemption did not have any effect on the case.

The only cases where the competition was between railroads and unregulated water transportation and where the Interstate Commerce Commission found the railroad rates unlawful were one in 1959, two in 1960, and one-half case in 1961.

Those 3½ cases that were found unlawful involving competition of unregulated water transportation, in those 3 years, 3½ tariffs out of a total of 158,000 railroad freight tariffs published, amounted to twenty-two ten-thousandths of 1 percent of the railroad freight tariffs that were found unlawful on bulk transportation in competition with water.

It is worth mentioning just what those three and a half cases were. These were the only cases where in rail-water competition the Commission restrained the railroads from competing with bulk water transportation. One of them in 1959 was a case where a railroad, trying to help out a coal dealer in Milwaukee, who was served only by railroad, to help him compete with the coal dealers on the docks in Milwaukee who handled waterborne coal, the railroad serving the interior dealer put in a rebate provision in his tariff and confined it to the people in the city limits only. All that the Commission did in that case was to say "You are unduly discriminating, and if you want to make that kind of tariff rebate, you must make it available to everybody in the switching

district." It was hardly an earth-shaking case. There were two cases in 1960. One of them was a case involving phosphate rock from Florida to Norfolk. There were a number of plants, land bound, that were only served by rail, and two or three plants were served by water.

Historically the traffic had divided. The waterside plants had taken their phosphate rock by water, and the interior plants had gotten it by rail. The railroads reduced the rates to see if they could capture all the traffic. The Commission threw out the reduction after making a finding that the railroads would be worse off if they captured all the traffic of all the plants in Norfolk and drove out water competition entirely, that their net contribution to overhead and profit would be less handling all the traffic at the reduced rate than it was with the higher rates and handling only the interior traffic.

The other case in 1960 was a case where the Northwestern Railroad put in a reduced trainload rate to Minneapolis from Fulton County, Ill., to compete with coal that went from southern Illinois and west Kentucky to Minneapolis, partly by rail and partly by barge. The rate was thrown out on the finding by the Interstate Commerce Commission that it was below out-of-pocket cost. It was worth noting that there was no water competition to Minneapolis from Fulton County.

The case in 1961, of course, is the celebrated Southern Railroad grain case which I marked down as a half a case, because, as of this moment, half the case has been won by the Southern Railroad, and the other half lost by the other railroads. The division of the Commission has approved the "Big John" rates on the Southern, but has disapproved the attempt of the other railroads to meet the Southern's competition with boxcars.

And that is the extent of what happened in those 3 years.

Now, what happened in 1962, although there has not been only one decision so far, is worth just reviewing. There were 12 cases that were marked "For hearing." One was settled out of court, and four were consolidated into two; nine cases were tried. Five of those cases involved market competition and competition between railroads where there was no water competition involved at all. In one case the Interstate Commerce Commission was challenging railroads' demurrage rules. One case involved rail-truck competition where both of the adversaries were regulated. One case, and it is still pending, involved a proposed rail reduction to meet alleged water competition, which as a practical matter was nonexistent, what we call phantom water competition. And the final one of the 1962 cases involved a movement of a lot of crushed stone in the New York area. The examiner proposes to settle that case by approving all the rates that were above "out of pocket" aand disapproving the rates that were below.

On this record, can anyone seriously contend that the elimination of the minimum-rate power is overwhelmingly needed to save the railroads from bankruptcy and Government ownership, as claimed? Does anyone see where the elimination of this power can save the public a billion dollars in freight revenue? Is there an overwhelming showing that the ICC has arbitrarily held an umbrella over water carriers, as claimed, to prevent lowering of rates by the railroads?

This study has taken a great deal of effort and is, so far as we know, completely new and unique. However, the ICC is scheduled to appear

before you shortly, and it may be you will want to ask those witnesses to comment on our study. I have here the full findings of the ICC in each of these cases, and I offer them to the committee to put in your file or include in the record as may seem appropriate.

(The material referred to may be found in the files of the committee.)

Mr. INGERSOLL. On the issue of who is winning the ICC rate cases on bulk commodities, which represent 90 percent of our traffic, I think the answer is very clear. The water carriers are not winning them.

Why then are we here to support a system that appears to do us so little good? Since important ICC decisions in recent years have begun to pile up against us, this question has been asked with increasing frequency throughout the water carrier industry.

We see the present situation as fluid, a period of questioning and adjustment. There is ready agreement throughout the entire transportation industry that clear standards for judging competitive rate disputes have not yet been hammered out. It is our faith that when they are hammered out, in the Commission and the courts, the standards will be fair to railroads, water carriers, and truckers. And if they are fair, we can live and prosper.

But if this system is to work, it must be impartial. The bulk exemptions are a genuine problem, inviting a cure. The President wants a cure, the railroads want a cure, and we want a cure.

In 1940 when water transport was brought under economic regulation by the ICC, certain bulk traffic was exempted from regulation on the grounds that it was not competitive with common carrier transport by rail or water.

This exception is still valid as to some large blocks of water traffic, notably oil, where the competition for heavy volume, long-haul traffic is almost entirely with pipelines. One of the principal rail spokesmen told the Senate last summer that he could see no chance of returning any oil traffic to the rails.

But a great part of the bulk traffic on the water is now highly competitive, not only between rail and water but within the water industry between common carriers and exempt carriers.

Although the record of the last 4 years' Commission action indicates a strong inclination to give the railroad the benefit of the doubt in meeting exempt competition, there still remain powerful handicaps to the efforts of the common carrier, by rail and water, to meet exempt competition:

The exempt carrier's rate is secret.
He may change it at will.
He may rebate.
He may make term contracts for exclusive patronage.
He may discriminate.
His secret rate is doubly attractive to his shipper who enjoys an advantage thereby under the Robinson-Patman Act.

These advantages enjoyed by the exempt carrier distort the competition and weaken the common carrier system on which the country must mainly rely for the efficient and dependable transportation service so necessary to a highly developed economy.

This flaw in the system should be cured.

What cure do we suggest?

Last year we urged repeal of the bulk exemptions, one of the alternative solutions recommended by the President.

But Mr. Williams last week expressed the fear that under regulation, rates would go up. This view is sometimes based on the anticipation that under regulation, and enjoying the privilege of legal price-fixing, the carriers would get together and raise rates.

We have studied this problem long and hard, and we think we have the answer. We now urge you to consider applying rate regulation to competitive bulk traffic while maintaining the present freedom of any one to engage in bulk transportation by water.

This would solve the problem of equality as far as the railroads are concerned. And leaving entry into bulk water transport as wide open as it is today would assure protection of the shipper's interest in full competition as a guarantee of low rates. If the existing carriers should get together under the antitrust immunity of the Bulwinkle Act and agree to raise rates, the door would be wide open for new entries to come into the business with competitive rates without having to prove public convenience and necessity.

Another group has a legitimate interest in this problem, those water carriers now operating in the exempt for-hire transport of bulk commodities. Their right to continue in this business and to expand their operations would be assured by the maintenance of the present right of any one to engage in bulk transport by water anywhere.

As we pointed out last year, not all bulk traffic is involved in keen intermodal competition. Oil transport by water is an outstanding example. No one would suggest that all traffic, whether competitive or not, should be regulated just for the sake of consistency. We therefore urge that the exemption now applying to water transport of petroleum and petroleum products be retained. The committee may think of other examples.

And as a continuing matter, there is already in the Interstate Commerce Act a paragraph (sec. 303(e)(2)) giving the ICC discretion to grant a specal exemption on water traffic "not actually and substantially competitive with transportation by any common carrier." Because of the present existence of the broad bulk exemptions, this authority is now seldom used, but if the bulk exemptions should be repealed or substantially amended, this paragraph would provide for the exemption of any traffic as to which regulation would serve no useful purpose. The paragraph should apply to all water carriers.

Another aspect of this problem invites comment. There are in the water transport business very many small operators on whom economic regulation would impose an unwarranted burden of paperwork. Here again there is now in the act a paragraph (sec. 303(g)) providing a special exemption for very small operators. While exploring the feasibility of amending the bulk exemptions, the committee may wish to consider increasing the limits on this small craft exemption.

No discussion of this whole matter would be complete without mention of private carriage. Much has been said about the growth of private carriage, and alarm has been expressed in many quarters at the erosion of the common carrier system resulting from private carriers' using the exemptions to invade the for-hire transportation market for back-haul traffic.

The extreme suggestion has been made that private carriers should be confined exclusively to moving their own goods and should be barred entirely from participating in the for-hire transportation business.

We reject that proposal. We believe that the person who moves his own goods on his own vessels should have the right to be in the transportation business generally.

But the public interest in a sound common carrier transportation system requires that such combination operations be carefully supervised.

We therefore urge that in your possible consideration of extending economic regulation without entry control to bulk water traffic you consider that if a person engaged in private carriage wished also to engage in for-hire transportation, in order to enjoy the increased efficiency of a balanced movement, he should be put on an equal footing with independent carriers by having both parts of his transport business subject to economic regulation.

We, of course, very greatly appreciate this opportunity to come before you once again. My summary can be made in one sentence. We urge you to adopt the President's alternative of extending regulation, but if you do not, we believe we cannot survive to perform our historic function of providing low-cost water transportation unless all the "existing laws against monopoly and predatory trade practices," particularly including the Robinson-Patman Act, are applied to the transportation industry.

Thank you, Mr. Chairman.

The CHAIRMAN. That was a very interesting statement, Captain. You have pointed up some interesting issues. I wonder if all of the people in the business that you are in, the water carrier business, agree with you.

Mr. INGERSOLL. I voice the overwhelming view of the regulated carriers in domestic water transportation. This is the view of the overwhelming majority of the regulated carriers. The unregulated carriers will have to speak for themselves. I have no proxy to speak for them.

The CHAIRMAN. The Big Five or the Big Four, are the Big Five regulated water carriers, are they not?

Mr. INGERSOLL. No. There are 30 members of the Common Carrier Conference, on the east coast, west coast, the Great Lakes, and the inland waterways.

The CHAIRMAN. I know. I expect you have more members than 30. But so-called Big Four, Big Five regulated water carriers haul the bulk of the transportation, do they not?

Mr. INGERSOLL. You are speaking about the Mississippi River system now?

The CHAIRMAN. Yes.

Mr. INGERSOLL. On the Mississippi River system, there are six large common carrier bargelines, which, for lack of a better word, we call "trunk lines," because they customarily send their barges anywhere in the Mississippi Valley, either on their own routes or on the routes of connecting carriers. There are also about a dozen other common carriers in the Mississippi Valley who are either much shorter in their geographic route or more specialized in their operations.

The CHAIRMAN. For our information, what percentage of tonnage by water is by the regulated barge companies?

Mr. INGERSOLL. In the Mississippi Valley, the last figures that I saw, which were a couple or three years ago, indicated that about 38 percent of the ton-miles that moved in the Mississippi River system were handled by the regulated carriers.

The CHAIRMAN. Would you say that that would be something along the same percentage, other than in the Mississippi Valley area?

Mr. INGERSOLL. I have the impression, on the east coast and the gulf coast operations, for example, that the overwhelming proportion of the domestic water transportation is oil. The president of the Seatrain line will be before you this afternoon, and perhaps can give you a solid answer to that. On the west coast, I think that very likely the same situation exists.

The CHAIRMAN. What I am trying to find out is about what percentage of the bulk-commodity haul is by the regulated water carriers, and what percentage was by the nonregulated water carriers.

Mr. INGERSOLL. I can only make intelligent estimate as to the Mississippi Valley, and I do not have the impression that this same exact pattern holds true on the east coast, west coast, or Great Lakes. But in the Mississippi Valley, the traffic, roughly, falls into four principal categories. Oil is about a third of the business, and is almost entirely in a class apart. The transportation of oil is not mingled, generally, with other kinds of transportation.

The CHAIRMAN. In a nutshell, what you recommend is to extend regulation to all operating in the bulk-commodity haul, but provide free entry by the water carrier.

Mr. INGERSOLL. That is right. I suggest that you not try to regulate oil, as no useful purpose would be served by regulating the movement of oil on the water. There may be other commodities where you can similarly still make the case, but the outstanding example is oil. But, there is a proportion of traffic in the Mississippi Valley, at least, where perhaps 10 to 15 percent of the total is highly competitive with the railroads, and with the common carrier water carriers, and where you could cure the problem, as far as equality is concerned, by regulating the rates without regulating entry.

The CHAIRMAN. Now, if you regulate the rates would that not regulate oil, too?

Mr. INGERSOLL. No; not if you continued the liquid exemption, and confined it to petroleum and petroleum products.

The CHAIRMAN. You are recommending that liquid petroleum and petroleum products be exempted from regulation?

Mr. INGERSOLL. Yes, sir; as they are now.

The CHAIRMAN. Why would you want to do that if you regulated everything else?

Mr. INGERSOLL. There is no useful purpose would be served by regulating oil. Oil that moves by water is competitive only with the pipelines in 95 percent of the situations, at least; perhaps more. The present oil carriers are quite happy with the situation. The pipelines with whom they compete are quite happy with the situation.

The CHAIRMAN. Would you extend the same freedom to the railroads in the movement of oil?

Mr. INGERSOLL. I think that the question of the railroads and oil is a question between them and the trucklines. The railroads do not compete with the water carriers on oil. They compete with the trucklines, and both railroads and the trucklines are regulated in movement of oil.

Last summer, Mr. Langdon said, as to oil, that he could see no possibility of getting any of that traffic back on the railorads. We believe this to be true. Oil is going to either move by water or by pipeline in the long hauls, and the short hauls are those competitive between rail and truck. We see no purpose served by regulating oil in water transport.

The CHAIRMAN. You do not want to get in the fuss between the truckers and the railroads, then. You want to stay in your own field insofar as the water and pipeline competition is concerned.

Mr. INGERSOLL. We think that those are the "facts of life," that this is where the competition is: between water and pipelines, and between rail and truck on oil, with some marginal overlap, probably, but nothing of any consequence.

The CHAIRMAN. Now, as another innovation, you say that you feel anyone who engages in private transportation—that is, of their own products—should be permitted to get in the transportation business generally.

Mr. INGERSOLL. That is a situation where the opportunity for uneconomic transportation is greater than elsewhere, and invites a careful supervision. Therefore, we suggest you deal with that problem, by saying that the man who wants to combine his own private transportation with "for hire" transportation should put both of those pieces of business in a regulated subsidiary.

The CHAIRMAN. Would you extend that same privilege to motor carriers?

Mr. INGERSOLL. I will have to ask the motor carriers to speak for themselves on that. I do not understand the business well enough to have any useful opinions.

The CHAIRMAN. You think we ought to regulate now—continue to regulate—in the field of transportation, according to modes as we have in the past, then?

Mr. INGERSOLL. Well, the only short answer I can give to that would be to say that the circumstances surrounding each different form of transportation are, in fact, different; and that making exactly the same arrangements for each different mode, I think, is relatively unworkable. At the same time, I concede that you cannot consider one mode in a vacuum without regard to what is going on in the regulation of another mode. And this competition on a large part of the bulk traffic between rail and water is a good example.

The CHAIRMAN. Do you think regulation should be extended to the movement of grain by the water carrier?

Mr. INGERSOLL. Yes, sir.

The CHAIRMAN. Agricultural products?

Mr. INGERSOLL. Grain and soybeans are the only agricultural products that move by water. It is worth mentioning——

The CHAIRMAN. Cotton does not move by water any more?

Mr. INGERSOLL. No. It is worth mentioning that grain that moves, in the Mississippi Valley, at least—sometimes by common carrier,

sometimes by exempt carriers—almost always moves at the published rates, the common carrier rates, whether or not it is handled by common carrier. It is significant.

The CHAIRMAN. Do you engage in the transportation of grain in your business?

Mr. INGERSOLL. Yes, sir; it is one of our biggest commodities.

The CHAIRMAN. You are free of regulation?

Mr. INGERSOLL. Depending on how we handle it. If we move it in a tow by itself, it is unregulated; if we move it in a mixed tow, it is regulated. We make no distinction. We make a common carrier bill of lading and start it down the river without any regard to whether or not it is going to happen to move technically exempt or whether it will happen to get in a mixed tow and be technically regulated. This is the practice of all or almost all of the water carriers in the Mississippi Valley.

The CHAIRMAN. Well, that is an interesting innovation.

Mr. Springer?

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Mr. Chairman, I just wanted to ask two or three questions.

It would be helpful for me just to have you explain generally your present setup. So I understand it you are exempt in what commodities in the movement of water?

Mr. INGERSOLL. Water transportation of bulk commodities is exempt, if you do not move more than three such commodities in the same vessels or tow at a time. In addition——

Mr. ROGERS of Florida. If you mix it beyond the three then it is regulated?

Mr. INGERSOLL. If you move more than three bulk commodities in the same vessels or tow at once then all of the bulk commodities are subjected to regulation.

In addition, there is another exemption that partly overlaps the first one which says that if you move liquid commodities in tank vessels designed exclusively for the purpose and subject to the safety regulation of the Coast Guard, then that traffic is exempt from economic regulation whether it is in a mixed tow or not.

Mr. ROGERS of Florida. I see. Now, if it is not exempt what procedure do you have to go through to establish your rate?

Mr. INGERSOLL. The same procedures exactly as the railroads.

Mr. ROGERS of Florida. And if you have not previously established the rate and you mix a cargo, what happens?

Mr. INGERSOLL. I did not quite get that.

Mr. ROGERS of Florida. Suppose you have no established rate at a certain area, then you have more than three cargoes in your particular one movement which would put you under regulation. What is your procedure there before you can move that or establish a rate? Must you file with the Commission or what happens?

Mr. INGERSOLL. Well, as a practical matter all of the common carriers have on file tariffs covering all tariff they are likely to be up against and just to cover any eventuality a tariff that says "freight not otherwise mentioned." There is a tariff in effect on anything you might happen to pick up.

Mr. ROGERS of Florida. So you have all these tariffs already?

Mr. INGERSOLL. Yes.

Mr. ROGERS of Florida. I see. Now, anytime you do not want to move under those or want to go below that set rate, or above it, you could move it in bulk, move just the one specific grain; is that true?

Mr. INGERSOLL. Yes, sir. If a common carrier who customarily operates in the handling of grain on a regulated, published-rate basis has any reason to want to cut the rate, he can if he wants to handle that piece of traffic as a separate piece of business on an exempt basis and not in a mixed tow. He may cut the price and make a different rate to every customer.

Mr. ROGERS of Florida. How often would you say this is done as a matter of practice?

Mr. INGERSOLL. As I say, on grain very little. The grain rate structure in the Mississippi Valley is a stable one. On other bulk traffic there is no rule of thumb. Every different commodity that moves has a different set of circumstances that influences the supply and demand and the ratemaking.

Mr. ROGERS of Florida. Are you subject to the antitrust laws when you move grain in bulk, one specific commodity?

Mr. INGERSOLL. I would guess that we are. This is a matter that has never ben litigated in any way or even tried to be litigated since—well, in the history of barge transportation that I ever heard of.

Mr. ROGERS of Florida. As far as you know you are under the antitrust laws?

Mr. INGERSOLL. The doctrine of primary jurisdiction seems to obscure the field so that there is always a question of who has jurisdiction. I have the feeling myself that on bulk transportation that is handled outside the jurisdiction of the Commission that the Sherman Act would apply, but only the Sherman Act.

Mr. ROGERS of Florida. I see. But it has never been tested as far as you know?

Mr. INGERSOLL. I do not think that the Clayton Act, or the Robinson-Patman Act or the Federal Trade Commission Act have any bearing whatever of unregulated bulk on the water.

Mr. ROGERS of Florida. What would be your feeling if the committee, make that the railroads could move grain, for instance, in bulk with exemption as long as it was just the one commodity and was not mixed as three commodities, in other words, if it were three or under? What would be your feeling on that?

Mr. INGERSOLL. Oh, I think it would be an unrealistic solution. The three-commodity limitation is unrealistic by water. It would be even more unrealistic by rail.

Mr. SPRINGER. Would the gentleman yield for a question?

Mr. ROGERS of Florida. Yes.

Mr. SPRINGER. Let me ask you this: Is grain competitive between water and railroad?

Mr. INGERSOLL. Highly competitive in the Mississippi Valley.

Mr. SPRINGER. It is in the Mississippi Valley. Well, now, is it competitive, for instance, in Havana, Ill., with the Illinois-Central Railroad in New Orleans?

Mr. INGERSOLL. Yes.

Mr. SPRINGER. Water is highly competitive with the railroad?

Mr. INGERSOLL. It is my impression, for example, there may be an Illinois-Central elevator back 20 or 30 miles from the river which serves Mattoon or Kaskaskia, and whatever, and a farmer in between is going to haul his grain to a river elevator or to the rail elevator according to what the markup is on the price board that day. Buying and selling of grain by the elevators on the railroad and on the river in the highly complex marketing of grain determines the price.

Mr. SPRINGER. What about soybeans?

Mr. INGERSOLL. Same thing.

Mr. SPRINGER. It is highly competitive out of central Illinois via water via Havana and the Illinois-Central railroad?

Mr. INGERSOLL. Grain and soybeans are highly competitive all the way up and down the Illinois Valley.

Mr. SPRINGER. All the way to New Orleans?

Mr. INGERSOLL. Yes. We have had rate cases involving rail-water competition on soybeans coming out of Arkansas.

Mr. SPRINGER. From Arkansas going to New Orleans?

Mr. INGERSOLL. Going to New Orleans.

Mr. SPRINGER. Are you saying to me now that soybeans shipped out of Havana, Ill., via the waterways is competitive with the Illinois-Central railroad going through Champaign?

Mr. INGERSOLL. A farmer who raised his soybeans on the bank of the river would sell them to an elevator on the river because he would get a better price there probably than back away from the river. Now, in other words, shipping by rail from Havana, Ill., to New Orleans, would cost more than shipping by barge so that you have to go away from the river a ways before the rail route becomes competitive. The further away you go the more competitive it is, and the first thing you know the river is not competitive.

Mr. SPRINGER. I have your point. Thank you.

Mr. ROGERS of Florida. But you could make it competitive depending on whatever price you decided to set. It is within your discretion, is it not, that is, the price of it, if you carry it in bulk?

Mr. INGERSOLL. The water carriers have the opportunity to change their grain rates at will.

Mr. ROGERS of Florida. Yes. So you can make it competitive.

Mr. INGERSOLL. The fact is they do not, amazingly enough, and this is the situation that has prevailed for 20 years.

Mr. ROGERS of Florida. Now, would it be helpful to the public for us to make them more competitive, if the railroads came in, and they reduced their price just as you could and can do now, but do not, evidently? Would this be helpful to the consuming public? What is your feeling about that?

Mr. INGERSOLL. My impression is that the overwhelming attitude of the grain trade, the people who buy and sell grain and ship it and receive it, is that they want to have a reasonably dependable and predictable rate structure. It is not entirely dependable. It is changing all the time. But the more chaotic it is the harder it is for them to know what their competitor is doing, and the impression I have is that that trade wants a fairly stable and fairly predictable rate structure in the movement of grain.

Mr. ROGERS of Florida. Well, of course, if I understood it, part of the consideration for this is the public itself that is going to purchase this grain. If the transportation costs become more competitive, for instance the railroads now come in and tell us that they can carry grain at a much cheaper rate than they are now allowed to do in the areas which would therefore be reflected, I suppose, in cheaper prices for that grain as it is consumed. If the bargelines presently, as you say, are not lowering their prices although they could be competitive in many areas, perhaps reduce the price to the consumer, I, in my own mind am wondering whether this committee should take action to allow the railroads to do this so they can reduce their prices just as you can presently do, even though you seem not to. If the railroads are allowed to, perhaps one or two will do something. Is this logical or not?

Mr. INGERSOLL. The trouble is that only a very small amount of grain is raised close to the origin water port, and only a very small amount of grain is used close to the water destination. The great majority of grain that moves in domestic commerce by water in the midcontinent area has a prior movement of some length by rail or by truck. Also, the great majority of it that moves by water, except for export, has a movement beyond the end of the water haul by rail or truck. The way this thing works is best illustrated by what the Southern Railroad did on grain from St. Louis into South Carolina, where a longstanding rate that had been worked out over many, many years between all of the different carriers and the different shippers and receivers of $12.50 a ton by rail was reduced to $5.25 a ton from St. Louis down into South Carolina. But from Chattanooga, the river port closest to South Carolina, the rate into South Carolina of $5.60 a ton was not reduced.

So that it became immediately more expensive to ship barge-rail via Chattanooga even if the bargeline cut the rate to zero and hauled the grain for nothing from St. Louis to Chattanooga. The barge-rail route would be more costly than the all-rail route. This kind of what the Supreme Court called "hankey-pankey" is what happens in unrestrained competition, where the rail competitors have everything all their own way and control the interior movements.

Mr. ROGERS of Florida. But you believe now, as I believe you said, a person who moves his own goods in his own vessel should have the right to be in the transportation business generally?

Mr. INGERSOLL. On a supervised regulated basis.

Mr. ROGERS of Florida. To what degree supervised and regulated?

Mr. INGERSOLL. The bulk exemption should be removed on the competitive traffic and that in the process of doing that you should fix it so that the shipper who wants to haul his own stuff and also be in the "for-hire" business on a "back-haul" basis should do it all in a regulated subsidiary.

Mr. ROGERS of Florida. Thank you. No further questions.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Ingersoll, if I understand your chart correctly, your opinion is that there would be very little difference between the situation now and the situation that would exist if we eliminated the minimum rates,

simply because whatever rate the rails have fixed the ICC have in 99 percent of the cases approved. Is that true?

Mr. INGERSOLL. I think that the thrust of this picture is to say that what the railroads seek to do now they are allowed to do in large measure. Mr. Hershey, who comes after me, will show you a panorama of rate discriminations all across the country which indicate the readiness and ability of the railroads to discriminate between shippers beyond our wildest dreams, even under the present restraint. If they were subjected to no restraint, how much further they would go in discriminating between one shipper and another only time would tell.

Mr. YOUNGER. Well, if the Interstate Commerce Commission allows them to issue these discriminating rates now and says nothing about it, certainly the situation will not be much different if the minimum rates were abolished. The ultimate result will be practically the same from your own charts.

Mr. INGERSOLL. We fear that it would be much different in that more extreme pinpoint competitive reductions would be made for the purpose of getting rid of the water competition. The fact that the railroads' batting average is very high now would perhaps suggest that they have a "feeling" as to how far they can go. That is a speculation.

Mr. YOUNGER. In your opinion, are these rates that are now published noncompensatory in many cases?

Mr. INGERSOLL. Oh, there is a great deal of that.

Mr. YOUNGER. Then you must agree then or conclude that the ICC is derelict in their duty.

Mr. INGERSOLL. I think that we are now in a period when the ICC and the carriers and the courts are looking for a balance and a meaning out of the Transportation Act of 1958. It is too soon to say what the courts are going to make out of that law.

Mr. YOUNGER. You have one other rather interesting proposal and that is that you put all of the bulk commodity transportation under regulation with the exception of liquid oil and oil products, is that true?

Mr. INGERSOLL. This is the outstanding example where no legislative purpose would be served by extending regulation.

Mr. YOUNGER. Do you recommend that rails own all the barge companies they want to and get into that business?

Mr. INGERSOLL. They are now forbidden to do so by the Panama Canal Act if that kind of entry would reduce competition.

Mr. YOUNGER. Yes.

Mr. INGERSOLL. I suggest that act ought not to be tinkered with.

Mr. YOUNGER. Do you mean that you still want them to be prohibited from getting into the business?

Mr. INGERSOLL. Wherever the Commission finds that their entry would reduce competition.

Mr. YOUNGER. To that extent you differ from the motor carriers. The motor carriers advocate that rails do all these things themselves by getting into the trucking business, so they recommend that the rails get into the truck business and haul exempted articles. That seems to be their recommendation.

Mr. INGERSOLL. I do not understand that we have a different point of view from the truckers on this business of common ownership.

Mr. YOUNGER. No. As I understand the rails are prohibited now from owning inland water carriers?

Mr. INGERSOLL. They are prohibited from owning a competitive water carrier, where the ICC would find such ownership would reduce competition.

Mr. YOUNGER. That is right. The motor carriers advocate no such restriction on the rails as far as owning the motor carriers.

Mr. INGERSOLL. I do not have that impression. I have the impression that the motor carriers do not want any change in the present restriction on rail ownership of motor carriers. They do not want that relaxed at all.

Mr. YOUNGER. That is not the testimony. I asked Mr. Pinkney and some of the others explicitly on that when they advocated no need of eliminating the minimum rates because the rails if they want to may get into that exempt business by getting into trucking business and do that carrying.

Mr. INGERSOLL. Oh, in the agricultural business.

Mr. YOUNGER. In the agricultural business, if they want to. There is a limitation now on the charters or certificates that issue to a motor carrier owned by a railroad which is different from a motor carrier that is not owned by a railroad, and if I understand the testimony which we have is that those restrictions on motor carriers owned by rails should be lifted and that they should be permitted to go into the business just as freely as privately owned motor carriers, just as freely as anybody else.

Mr. INGERSOLL. I had the impression that they say that the present right of the railroads to be in agricultural trucking is not hurting anybody and that there is no need to curtail that right even if you should do anything with agricultural exemption.

Mr. YOUNGER. No. I asked them on the whole question.

Mr. INGERSOLL. There is a different situation in water transport. Railroads can engage in exempt trucking, but cannot engage in exempt water transportation without permission.

Mr. YOUNGER. Yes. Well, they cannot engage in exempt agricultural either because their certificates are always limited in one way or another whenever they get a certificate for a trucking company that is owned by a rail. Of course, anybody can go out and haul some vegetables if they want to but that is not a very profitable business.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rostenkowski?

Mr. ROSTENKOWSKI. Thank you. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Van Deerlin?

Mr. VAN DEERLIN. No questions.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Mr. Ingersoll, I wish to ask you a little more about this Southern grain rate matter. That is the case where the Southern Railway offered a rate of $5.25 per ton, I believe you said, and I believe some bargeline filed a protest. Where was that bargeline operated?

Mr. INGERSOLL. The president of that bargeline is scheduled to come after me this afternoon. He could probably give you better answers to your questions on that point than I can. Or would you like me to tackle that?

Mr. KORNEGAY. I will ask him, too. But let me ask you a few questions about it. Where was the bargeline operated?

Mr. INGERSOLL. The principal bargeline involved in that case operates principally on the Tennessee.

Mr. KORNEGAY. Tennessee River?

Mr. INGERSOLL. Yes.

Mr. KORNEGAY. Of course, that is many, many miles from North Carolina, South Carolina, Georgia, and the Southeastern States.

Mr. INGERSOLL. Yes, sir.

Mr. KORNEGAY. Certainly, a railroad operating in the Southeastern States is not in competition with bargelines on the Tennessee River, is it?

Mr. INGERSOLL. The Southern runs from St. Louis to Chattanooga to South Carolina. For the first half of the route from St. Louis to Chattanooga it is competitive with water.

Mr. KORNEGAY. That was the basis then for the protest filed by that bargeline, is that correct?

Mr. INGERSOLL. I think that would be more appropriate for me to ask that he be allowed to handle that question because there are a great many people in that case in opposition, and they had a variety of bases for their protests.

Mr. VAN DEERLIN. Will the gentleman yield?

Mr. KORNEGAY. Yes, I will yield.

Mr. VAN DEERLIN. I think the dispute here was that the railroad was charging more for that portion of the journey from Chattanooga to South Carolina than they were charging from St. Louis to South Carolina, is this not correct?

Mr. INGERSOLL. That is correct.

Mr. KORNEGAY. Mr. Ingersoll, is the provision of the Interstate Commerce Act, section 4, subsection 2, I believe, provides that where a railroad is in competition with a water route and reduces its rates then later it comes in and wants to increase the rate or reinstate the former rate they must have a hearing before the Commission and the Commission must find that the circumstances and conditions have changed from the time of the reduction in rate for the purpose other than the elimination of water transportation. How have you found that this provision in the law works?

Mr. INGERSOLL. My impression is that it is an empty promise, that conditions and circumstances are constantly changing in so many different ways, that in any period of a year you can find a reason for changing your rate other than water competition.

Mr. KORNEGAY. In other words, I gather from what you say it has not afforded much protection for water haulers.

Mr. INGERSOLL. No. I think that it——

Mr. KORNEGAY. In other words, the railroads are able to show in most every instance some change—I will put it this way—show a sufficient change to satisfy the Commission to let them raise the rate, is that correct?

Mr. INGERSOLL. Well, thanks to the fact that the Commission has been vigilant and has been keeping this competitive situation from getting "out of hand," water transportation in the Mississippi Valley has been healthy and has grown. Competition is tougher and tougher and our profit margins get narrower, but more and more people like

water transportation and come to the river, and water transportation has increased so that the extent to which Fourth Section Departures have been permitted, competing with water, has not been enough, except perhaps in some isolated instance, to kill off any water competitors. This is a delicate balance, and it has been administered, all things considered, with conspicuous success by the Commission. Lower and lower rates by water and rail are available along the river valleys and along the coasts, and the rail-water competition continues to be there. This is the mechanism by which the public gets low rates, with the supervision of the ICC to see that that competition is continued and not allowed to get "out of hand" with somebody knocking somebody else out.

Mr. KORNEGAY. Do you feel that this section of the act has kept the railroads from knocking some of the water haulers out of business?

Mr. INGERSOLL. That is right. We have performed our function of keeping the rate structure, not only by water but by rail, very low.

Mr. KORNEGAY. I understand.

Mr. INGERSOLL. Federal Barge Line, for example, now moves freight for an average charge per ton-mile less than we did 39 years ago, 10 percent less.

Mr. KORNEGAY. The rates are now 10 percent less than they were 39 years ago——

Mr. INGERSOLL. Yes, sir.

Mr. KORNEGAY (continuing). Notwithstanding the increase in other costs?

Mr. INGERSOLL. That is right. The barge industry has gradually gotten more and more efficient and has concentrated more and more on the heavy tonnage movements, and their costs from technological advance have continued to go down gradually in spite of increase in labor and fuel. For example, the Federal Barge Line's freight rate on grain from St. Louis to New Orleans today is only 15 percent higher than in 1918.

Mr. KORNEGAY. Perhaps this section of the act has been of some benefit then to the water carriers and, in turn, to the public by maintaining the competition that you have spoken of.

Mr. INGERSOLL. Water transportation was almost gone in the country in 1920. The Commission was then given the minimum rate power in order to prevent destructive competition. Since then water transportation has grown and grown and come to be a terrific influence in the whole valley not only in moving freight cheaply, but in making the rail-water competition hold down the rail rates all over the valley, as Mr. Hershey will show you in an exhibit that he will give you. This is the result of the supervision of the ICC. You can see they have not exercised their power very much. But this is an effective big stick in the closet that keeps things in balance.

Mr. KORNEGAY. I asked you in order to find out if such a provision were to apply generally to all modes of transportation, would it be a sufficient detriment to keep railroads from reducing rates to a noncompensable—reducing to a noncompensable—reducing to a noncompensable rate with the idea that as soon as the competition were eliminated then they would raise the rate, you see.

Mr. INGERSOLL. We think this is inevitable.

Mr. KORNEGAY. My point is whether or not if such a provision applied generally to all modes as it now applies to water carriers, whether or not that would prevent or serve as a deterrent to the railroads not to engage in predatory practices, in other words if the railroads—they are in the business to make money just like the bargelines, and the truckers, all of them are—if they know that they set a rate that is so low that they are losing money on it, but they can raise it as soon as they eliminate competition, then there might be some reason to engage in that type of practice. But if they knew they could not raise that rate once it was set without showing some real changes in conditions and justification for it, then it would be very reluctant, in my opinion, to set a noncompensatory rate in the first instance.

Mr. INGERSOLL. The record will seem to show that that is not the case. The record will seem to show as Mr. Hershey will show you——

Mr. KORNEGAY. In other words, you say the railroads, notwithstanding that provision of law as it now relates to water carriers and notwithstanding the fact that they would realize great difficulty in raising the rate at a later date, would go ahead and set a rate on which they would lose a lot of money?

Mr. INGERSOLL. They make rates on one basis where there is competition and on another basis where there is not competition, and the difference between the two is beyond belief. It is far out of line with any other industry in the country.

Mr. KORNEGAY. Yes, sir, I understand.

Mr. INGERSOLL. What would happen if you take away the restraint that now exists is a matter on which we may only speculate.

Mr. KORNEGAY. But the point I am trying to make is that if they knew—that is, the railroads knew—that they could not raise that rate as soon as they eliminated this competition by their reduced rate and would have to live with the noncompensatory rate, then would they not be much more reluctant to set a noncompensatory rate in the first instance?

Mr. INGERSOLL. On the record this does not seem to be the case. If a railroad cuts a rate today with the permission of the ICC, they have no way of saying, "Well, we are going to cut the rate, we are going to get rid of competition and then raise the rate in 2 years." A rate reduction today to below out-of-pocket costs, as many of them are, is made with the presumption that they are going to have to live with it.

Mr. KORNEGAY. I do not know. I am just asking about it. I wanted to see what your experience was along those lines. That is all. Thank you very much.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Van Deerlin?

Mr. VAN DEERLIN. No questions, Mr. Chairman.

The CHAIRMAN. Thank you very much, Captain Ingersoll. You have permission to file your statement, I believe, in the record.

I believe that you did have some specific suggestions in some of your recommendations here, and if you do, you are welcome to include them with your statement in the record.

Mr. INGERSOLL. We have some suggestions as to the kind of language that would implement the various recommendations that I made in my testimony. If these suggestions would be useful.

The CHAIRMAN. Do you have language that you propose reaching the point of bringing all water carriers in the regulatory processes permitting anyone to have a certificate that wants it without having to show convenience and necessity?

Mr. INGERSOLL. Our approach is to say that you should repeal the exemption, except as to oil, and apply all parts of regulation of the Interstate Commerce Act to that newly regulated transportation except the requirement that the operator have a certificate.

The CHAIRMAN. All right. You may file that for the record.

(The information referred to follows:)

A BILL To amend part III of the Interstate Commerce Act, as amended, relating to the water-carrier bulk commodities exemptions, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsections (b) and (c) of section 303 of the Interstate Commerce Act, as amended (49 U.S.C., sec. 903 (b) and (c)), are hereby repealed.

SEC. 2. That subsections (a) and (f) of section 309 of the Interstate Commerce Act, as amended (49 U.S.C., sec. 909(a) and 909(f)), are hereby amended by adding, immediately after the words "Except as otherwise provided in this section and section 311" which appear at the beginning of each subsection, the following language:

"And excepting transportation made subject to this part by the repeal of subsections (b) and (c) of section 303, when performed by persons primarily engaged in transportation."

A SUGGESTION TO LIMIT THE LIQUID EXEMPTION BY WATER TO PETROLEUM AND PETROLEUM PRODUCTS

A BILL To amend part III of the Interstate Commerce Act, as amended, relating to the water-carrier bulk commodities exemptions, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (d) of section 303 of the Interstate Commerce Act, as amended (49 U.S.C., sec. 903(d)), is hereby amended to read as follows:

"Nothing in this part shall apply to transportation by water of petroleum and petroleum products, when transported in bulk in tank vessels."

SEC. 2. That subsections (a) and (f) of section 309 of the Interstate Commerce Act, as amended (49 U.S.C., sec. 909(a) and 909(f)), are hereby amended by adding, immediately after the words "Except as otherwise provided in this section and section 311" which appear at the beginning of each subsection, the following language:

"And excepting transportation made subject to this part by the amendment of subsection (d) of section 303, when performed by persons primarily engaged in transportation."

A SUGGESTION TO BROADEN THE COMMISSION'S PRESENT AUTHORITY TO GRANT A SPECIAL EXEMPTION ON NONCOMPETITIVE TRAFFIC TO ALL WATER CARRIERS

A BILL To amend part III of the Interstate Commerce Act, as amended, relating to the water-carrier exemptions, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (2) subsection (e) of section 303 of the Interstate Commerce Act, as amended (49 U.S.C., sec. 903(e)(2)), is hereby amended by striking out the words "by contract carriers" in the first sentence.

A SUGGESTION TO INCREASE THE LIMITS OF THE "SMALL CRAFT" EXEMPTIONS

A BILL To amend part III of the Interstate Commerce Act, as amended, relating to the water-carrier exemptions, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (g) of section 303 of the Interstate Commerce Act, as amended (49 U.S.C., sec. 903(g)), is hereby amended by changing the words "one hundred tons carrying capacity" to read "four hundred tons carrying capacity," and by changing the words "one hundred indicated horsepower" to read "four hundred indicated horsepower."

SUGGESTED AMENDMENT TO H.R. 4700 TO PROVIDE THAT CARRIERS FREE FROM MINIMUM RATE REGULATION WOULD BE COVERED BY "EXISTING LAWS AGAINST MONOPOLY AND PREDATORY TRADE PRACTICES"

(New material italicized, material now in H.R. 4700 which should be eliminated in black brackets)

A BILL To exempt certain carriers from minimum rate regulation in the transportation of bulk commodities, agricultural and fishery products, and passengers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1 of the Interstate Commerce Act, as amended (49 U.S.C. 1), is amended by adding thereto a new paragraph (23) to read as follows:

"(23) Notwithstanding any other provisions of this Act, in the case of rates, fares, or charges for the transportation of (1) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count, or to the transportation of liquid commodities in bulk; (2) property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof): *Provided*, That the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' as used herein shall include property shown as 'Exempt' in the 'Commodity list' incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as 'Not exempt': *Provided further, however*, That, notwithstanding the preceding proviso the words 'property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof)' shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, wool tops and moils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shellfish when frozen or fresh (but not including fish and shellfish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products); or (3) passengers, by carriers subject to parts I, II, III, or IV of this Act, the Commission shall have no authority or power to determine that such a rate, fare, or charge is lower than a reasonable minimum rate, fare, or charge. The Commission, however, shall retain all currently effective authority and power to determine that such a rate, fare, or charge is in violation of applicable provisions against unjust discrimination or undue or unreasonable preference or advantage. When used in this paragraph, the terms 'rates, fares, or charges' shall include all clasifications, regulations, and practices relating thereto. If any carrier or carriers exempted by the provisions of this pragraph *or any other provisions of the Interstate Commerce Act* from minimum rate regulation shall engage in any act, practice, or conduct or be a party to any arrangement, contract, combination, or conspiracy with respect to any rate, charge, or fare for transportation of any commodity referred to in this paragraph, or of passengers, in violation of the provisions of the 'antitrust laws', [as designated in section 1 of the Act of October 15, 1914, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes',] such carrier or carriers shall be subject to the proceedings and penalties specified in such laws and all amendments thereto with respect to such

violations. *For the purposes of this paragraph, and notwithstanding any other definition contained within the antitrust laws, which definition shall remain unchanged, the term "antitrust laws' includes each of the following enactments, as amended: the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914, the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and the Act entitled 'An Act to amend section 2 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914, as amended, and for other purposes,' approved June 19, 1936: Provided, however, That, wherever the antitrust laws as defined in this paragraph use the term 'commodities', 'goods', or words of similar import, they shall be deemed to include units of service for the transportation of any commodity referred to in this paragraph or of passengers; wherever the antitrust laws as defined herein use the phrases 'commodities of like grade and quality' and 'goods of like grade, quality, and quantity' or words of similar import they shall be deemed to include equivalent units of service for the transportation of any commodity referred to in this paragraph or of passengers; wherever the antitrust laws as defined herein use the term 'price' or words of similar import they shall be deemed to include the rates, fares, or charges, of carriers exempted by the provisions of this paragraph or by any other provisions of the Interstate Commerce Act insofar as applicable to units of service for the transportation of any commodity referred to in this paragraph or passengers; wherever the 'antitrust laws' as defined herein use the terms 'Commission' or 'Federal Trade Commission' they shall be understood to mean the Interstate Commerce Commission wherever necessary to empower the Interstate Commerce Commission to implement the purposes of this paragraph; Provided further, That the prohibition against suits in equity for injunctive relief against common carriers contained in section 16 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and the exception of common carriers from subsection (2) (6) of section 15 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes, 'approved September 26, 1914, shall not be applicable to any carrier or carriers exempted by the provisions of this paragraph or any other provisions of the Interstate Commerce Act from minimum rate regulations with respect to any rate, charge, or fare for transportation of any commodity referred to in this paragraph, or of passengers: And provided further,* That nothing contained herein shall be construed to prohibit a common carrier from establishing reasonable through routes with other such carriers, or from considering, initiating, or establishing jointly with other such carriers *whose lines constitute a portion of such through routes,* the rates, fares, classifications, divisions, allowances, or charges applicable solely to such reasonable through routes."

(Changes similar to the changes proposed above should also be made in S. 3243 between line 22, p. 4 and line 21, p. 6 and between line 9, p. 7 and line 10, p. 8. In the interest of brevity, such similar changes have not been repeated in this proposed amendment. The provisions of S. 3243 between line 22, p. 3 and line 21, p. 4, between line 22, p. 6 and line 8, p. 7, and between line 11, p. 8 and line 18, p. 9, would be included in, but would not be changed by, this proposed amendment.)

Mr. DINGELL. Mr. Chairman, may I ask one question?

You say except as to oil. Your statement is we should regulate all bulk except oil. Why would you make the distinction against regulating oil traffic in bulk while regulating the other traffic involved?

Mr. INGERSOLL. I suggest that there may be other commodities that are no more competitive with regulated rail or water carriers than oil is. Oil is the outstanding example. There may be others.

We also suggest that there is in section 303(e)(2) a provision now in the Interstate Commerce Act so that as to a particular movement if the carrier or the shipper felt that his movement ought to be exempt and was not competitive with rail or water carriers he can now go in

and ask for a special exemption. We say that this problem as between deregulating the railroads or regulating the water carriers does not require a 100-percent elimination of all the exemptions in order to cure the inequity, because it is not inequitable all the way across the board.

No one can say that any railroad or any common carrier water carrier is being hurt, for example, by the tanker trade in oil from Texas to New York. The only other way that that will ever move is by pipeline.

Mr. DINGELL. Thank you very much, Mr. Chairman.

Mr. KORNEGAY. Will the gentleman yield?

The CHAIRMAN. I have the floor. We have eight witnesses.

Mr. KORNEGAY. Let me ask him one question.

Are pipelines regulated?

Mr. INGERSOLL. Pipelines are regulated; yes, sir.

The CHAIRMAN. Their rates are not regulated, are they?

Dr. STEVENSON. Rates, but no certificates.

The CHAIRMAN. Thank you very much.

Mr. INGERSOLL. Yes, sir.

The CHAIRMAN. The next witness will be Mr. J. W. Hershey. Mr. Hershey, you may identify yourself for the record and proceed.

STATEMENT OF J. W. HERSHEY, BOARD CHAIRMAN, AMERICAN COMMERCIAL BARGE LINE CO., REPRESENTING COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS AND INLAND WATERWAYS COMMON CARRIERS ASSOCIATION

Mr. HERSHEY. Chairman Harris, thank you, and gentlemen of the committee, my name is Jacob W. Hershey. I am board chairman of the American Commercial Barge Line Co., with principal offices in Houston, Tex., and in Jeffersonville, Ind. I am also president of the Inland Waterway Common Carriers Association and also a member of the executive committee of the common carrier conference.

I sensed that the committee has a great number of witnesses, and in view of that fact and the fact that the questioning of Mr. Ingersoll has been so thorough that he has covered a number of the points which I had in mind, with your permission I will make this presentation primarily an introduction of an exhibit called railroad ratemaking, a catalog of discrimination, a short prepared statement that I had accompanied with it. Rather than reading the prepared statement in full, I will just like to cite perhaps in total two or three pages from it.

Last year this committee showed considerable interest in the possibility that the legislation to remove minimum rate regulations on bulk traffic of the railroads would result in more discrimination in the Nation's freight rates rather than less. I will talk to two points. The first one will be the description and analysis of this discrimination itself and the second point will simply be an attempt to evaluate dollarwise the importance of the river and canal segment of the inland waterway industry.

The question might well be asked of me, Why are the water carriers so much concerned at the very high rates paid by shippers in interior areas? What is it to us that shippers in Arkansas, Oklahoma, Wyo-

ming, North Dakota, California, and elsewhere pay three times as much for rail transportation services as those who live along the rivers?

The answer is that revenues from these very high charges are used by the railroads to subsidize rates competitive with water carriers, rates which we believe to be uneconomic. As the railroads move into a rate war to eliminate water competition, following the passage of this law, the high rates in the interior will become vital to them. Far from reducing them, as promised, the railroads will need to increase them to subsidize their below-cost river competitive rates.

Last year at the very time that Mr. Heineman, president of the Chicago & North Western Railroad, was testifying before you about his desire to reduce discrimination in ratemaking, his own attorneys and accountants were doing their best to frustrate the demands of a landlocked shipper to obtain reductions in rates on the Chicago & North Western Railroad on bentonite clay, a high tensile clay, very useful for lining oil wells.

If you will turn to chart 21 of the booklet before you, the issue becomes clear. On a shipment of a bulk commodity, bentonite, from Belle Fourche, N. Dak., to Chicago, a distance of 923 miles, the rail charge is $15.80 a ton, which is equivalent to 17 mills per ton-mile. Yet, a similar bulk commodity, limestone, is carried from Prairie du Rocher, Ill., to Baton Rouge, a distance of 735 miles, for $2.40, 3 mills per ton-mile, which was below the out-of-pocket rail cost. Needless to say, the Belle Fourche shipper wants a reduction.

I would like to read a statement from the complainant in this case. He said:

> In complainant's case there is no effective intermodal competition and the complainant is entirely dependent for relief upon the Chicago & Northwestern as the only railroad serving it. That railroad is convinced that bentonite clay from Belle Fourche can bear almost any level of rates without impairing the volume of traffic. It is too shortsighted to recognize the signs of the declining bentonite movement and the shifting factors affecting the sale of bentonite versus its competitive products and processes. Convinced that it has the goose that lays the sea and with golden eggs and the eggs will continue without reference to the condition of the goose the C. & N.W. has steadfastly refused to give complainant any relief. On the contrary, it has taken steps to increase the already extortionate level of rates. Complainant's only recourse if it intends to remain essentially a one product business is to seek relief from the Commission.

Mr. Heineman's lawyers and accountants in this case relied heavily on a little-used section of the act, section 15a(2), which requires the Commission to take into account the revenue needs of the carriers. Don't force us to reduce this rate, the C. & N.W. told the Commission, we need the money. While Mr. Heineman was complaining to this committee of his inability to reduce rates, his attorneys were saying, in effect, to the Commission: "We have to gouge the guys in the interior because we need the money."

As we said before, if the proper rate for hauling bulk commodities 735 miles by rail is $2.40 a ton, it cannot be fair to charge $15.80 for less than 200 miles more service. If the Commission permits very low water-competitive rates, then all rates should come down on similar commodities for similar distances. If the rails make money on the limestone, as they claim to do, though the record does not support this, then they should be able to make money at the same rates in

areas where they do not have the encouragement of barge competition.

We would like to have this booklet introduced into the record. There are 32 examples and time is the only limitation in finding many, many more.

I do not believe these charts need very much comment. We see sugar from New Orleans to Little Rock, Ark., $12.10 a ton for 436 miles, 28 mills per net ton-miles where there is no competition, to Cincinatti, sugar pays 13 mills. Limestone again pays $4.39 a ton for 346 miles from Bauxite, Ark., to Baton Rouge, 13 mills for net ton-mile is the way it works out again, comparing with 3 mills on limestone from Prairie du Rocher.

So it goes down the line through this booklet: phosphate rock, hydrofluoric acid, various parts of the country, Michigan, West Virginia, North Carolina, South Carolina, rates which show a ratio of anywhere from twice to three times as much as water compelled rates.

Now, our contention is simply this, that there can be no reasonable doubt that this type of discriminatory ratemaking is the real inequality in transportation and that it would become even more drastic under H.R. 4700. If the Interstate Commerce Commission cannot or will not prevent that type of discrimination now how can any reasonable man expect discrimination to become anything but worse under H.R. 4700?

We water carriers have never wavered from the belief that the railroads, the truckers and the water carriers—and most of all the public—would best be served by a cost-oriented pricing system for transportation. This would eliminate most of the discrimination.

A new development since last year will interest the committee. The ICC now has, for the first time, a barge form C cost formula to place alongside the rail form A in competitive disputes. We have spent much time in helping the Commission develop this objective yardstick so that it can determine the low cost carrier in any given situation. We are hopeful that this will fill an information gap that has been of concern to our competitors.

We are hopeful, also, that the Supreme Court decision in the *New Haven* case will be interpreted by the Commission as a requirement that fair relative cost standards must be developed and made a part of the record of every competitive rate dispute.

We agree with Prof. Carl H. Fulda, professor of law of Ohio State University, in whose study, "Competition in the Regulated Industries" appears this statement:

> Regrettably, one searches in vain for an unambiguous pronouncement of general policy with respect to various measures of compensativeness. Indeed, the reading of the decisions creates the impression that the Commission selects whichever theory appears best to fit the case at hand. The transportation industry and their counsel may be entitled to something better than that without sacrificing the flexibility of the administrative process.

Let me go on then to my second point: Why should this committee concern itself with the survival of water carriers? I think this can be made plain by a simple calculation, and I think this calculation is essential because it seems to me that the behavior of branches of Government recently would indicate that, in fact, perhaps the water segment of the transportation system is expendable.

Last year, the preliminary estimate of the U.S. Engineers indicate that 135 billion ton-miles of transportation were performed on the rivers and canals of the United States. The average haul was 287 miles. Bearing in mind the substantial short haul of coal, sand and gravel, I would estimate that the average fully distributed cost for this traffic is approximately one-third of a cent per ton-mile, somewhere between 3½ mills 4 mills per ton-mile.

Let us suppose for a moment, that there were no water carriers and this traffic had to move by rail. I have ascertained from the Commission reports that the cheapest transportation performed by railroads in the three principal districts which are competitive, the Ohio and Mississippi River system, namely, the western, the eastern, and southern district is performed in 100-ton capacity open hopper cars of the type that the railroads would use normally for ores and coals in other words, this is the cheapest type of transportation they have. For the mileage block of 300 miles, the Commission reports average cost in 100-ton gondola cars is as follows:

In the eastern district, 22.4 cents per hundredweight, which is equivalent to 14.9 mills or 1½ cents per net ton-mile.

Southern district—16 cents per hundredweight, equivalent of 11.1 mills or 1 cent per net ton-mile.

Western district—19.6 cents per hundredweight, equivalent of 13.1 mills or 1⅓ cents per net ton-mile.

If there were no water carrier industry, the charge which the shipping public would have to pay to move the traffic that is now moved by water, would be somewhere near an average of these charges, or 13.5 mills.

It might be argued here in this comparison, of course, the railroads would not try to charge fully distributive costs. They would put in something lower because these bulk movements, but in point of that, experience will show that perhaps these new shippers of rail traffic which normally would move by water might get a better deal on fully distributed costs but somebody somewhere in the country would have to make up the difference just as they are doing now.

In any event under these circumstances the freight charge would then be somewhere in the neighborhood of $1,809 million compared to the $472 million now being paid for barge service. The difference is $1,337 million.

It is true that the barge route is frequently more circuitous than the rail service. Some allowance should be made for this. On the other hand, much of the bulk traffic cannot travel in open hopper cars that represent the railroad's cheapest type of service. Grain, for example, would have to be moved in a closed hopper car or boxcars.

Giving the railroads every benefit on comparative costs, the direct advantage of low-cost water service on the rivers and canals is at least a billion dollars a year.

This saving applies only to rivers and canals. If the Great Lakes carriers and remainder of the coastal and intercoastal carriers were also to be eliminated, as we believe they would be under this bill, the increase to freight service would be even higher.

We think this is the basic issue before you. Unless you deem the water carriers expendable, this is the monetary measure of the risk we take. Needless to say, most commodities carried by water could

not afford to pay rail rates three times the level they now pay in barge rates. Much of the grain, the steel, the ore, coal, the phosphate rock and alumina would simply not get to market at all.

I think any fair review of the role of the water carrier in the economy would demonstrate that there would be major dislocations to industry if the water carrier is badly damaged by granting the railroads a license to put us out of business.

I would just like to add one thing. When we talk deregulation of the bulk commodities, I think many students of transportation believe, and I think that the Interstate Commerce Commission believes that any further deregulation would have to be accompanied by complete deregulation, and I think, therefore, that when we consider this problem in its fullest context we have to consider it on the basis of whether we are simply going to eliminate the Interstate Commerce Commission as the basic referee in these price disputes which we now have and which, of course, would become much more drastic with the elmininationof the minimum ratemaking power.

Thank you very much.

The CHAIRMAN. Thank you, Mr. Hershey. Your entire statement may be included in the record. I notice there were parts of it that you did forego.

Mr. HERSHEY. Yes, sir. Thank you.

(The statement referred to follows:)

STATEMENT OF J. W. HERSHEY, REPRESENTING COMMON CARRIER CONFERENCE OF DOMESTIC WATER CARRIERS AND INLAND WATERWAYS COMMON CARRIERS ASSOCIATION IN OPPOSITION TO H.R. 4700

My name is Jacob W. Hershey, board chairman of American Commercial Barge Line Co. of Houston and Jeffersonville, Ind. I am president of the Inland Waterways Common Carriers Association, a group of the leading ICC-regulated bargelines operating on the Mississippi-Ohio River system and the Gulf Intracoastal Canal. I am also a member of the executive committee of the Common Carrier Conference of Domestic Water Carriers. I appear here today on behalf of both IWCCA and the conference.

The committee showed considerable interest last year in the possibility that the legislation to remove minimum rate regulation on bulk traffic of the railroads would result in more discrimination in the Nation's freight rates rather than less.

We believe this is true and that it is a most valid objection to this legislation. We have developed, since last summer, a new study of the system of discriminatory railroad pricing now permitted under the Interstate Commerce Act. We will demonstrate that the removal of the minimum rate power will increase discrimination.

Indeed, a little-used section of the act, section 15a(2), which requires the Commission to give consideration "to the need for revenues sufficient to enable the carriers under honest, economical, and efficient management, to provide such service may well make mandatory the continuation of this discriminatory rate structure during the period of cutthroat rate cutting which will be set off by this legislation if it becomes law.

Ironically, it was Mr. Ben W. Heineman's railroad, the Chicago & North Western, in ICC litigation last summer which pointed out the way the law will be made to work if the deregulation proposal is passed.

I think it is useful to recall once again the testimony of Mr. Ben W. Heineman, chairman of the Chicago & North Western Railroad last July 13, because it is in such great contrast to what his railroad was doing at the same time before the Commission and illuminates the problem with clarity. He said:

"I think that this committee may not realize that, in part, this differential (between water located and inland plants) is the direct product of existing regualtion. We have great difficulty lowering rates. The Commission tends

to permit rate reductions with less difficulty where we may demonstrate that the lower rate is water compelled.

"They are not willing to trust the management's judgment.

"We must make clear demonstration that this lower rate is the result of this type of competitive compulsion.

"The consequence of this is that, being human, having only so much time, only so many lawyers, only so many accountants on our staff, that we do tend to move in the area of rate reductions where there is water-compelled differentials and the like.

"And it is a fact, Mr. Chairman, that, in my opinion, the inequalities to which you referred in your question yesterday will tend to disappear far more rapidly of the recommendations of the President were carried into law."

This reaction was echoed by Mr. Brosnan and by Mr. Langdon.

You may well ask the question: Why are the water carriers so much concerned at the very high rates paid by shippers in interior areas? What is it to us that shippers in Arkansas, Oklahoma, Wyoming, North Dakota, and elsewhere pay three times as much for rail transportation service as those who live along the rivers?

The answer is that revenues from these very high charges are used by the railroads to subsidize rates competitive with water carriers, rates which we believe to be uneconomic. As the railroads move into a rate war to eliminate water competition, following the passage of this law, the high rates in the interior will become vital to them. Far from reducing them, as promised, the railroads will need to increase them to subsidize their below-cost river competitive rates.

At the very time Mr. Heineman was testifying before you last summer, his attorneys and accountants were doing their best to frustrate the demands of a landlocked shipper to obtain reductions in rates on the Chicago & North Western Railroad on bentonite clay, a high tensile clay very useful for lining oil wells and for other purposes.

If you will turn to chart 21 of the booklet before you, the issue becomes clear. On a shipment of a bulk commodity, bentonite, from Belle Fourche, N. Dak. to Chicago, a distance of 923 miles, the rail charge is $15.80 a ton. Yet, a similar bulk commodity, limestone, is carried from Prairie du Rocher, Ill. to Baton Rouge, a distance of 735 miles, for $2.40. Needless to say, the Belle Fourche shipper wants a reduction. (The case reference is a shipper's complaint, ICC 33830.)

Mr. Heineman's lawyers and accountants relied heavily on a little used section of the act, section 15a(2), which requires the Commission to take into account the revenue needs of the carriers. Don't force us to reduce this rate, the C. & N.W. told the Commission, we need the money. While Mr. Heineman was complaining to this committee of his inability to reduce rates, his attorneys were saying, in effect, to the Commission: "We have to gouge the guys in the interior because we need the money." An examiner's report is now out proposing that the managerial discretion of the C. & NW. be interfered with and the rates reduced, but only slightly.

As we have said before, if the proper rate for hauling a bulk commodity 735 miles by rail is $2.40 a ton, it can't be fair to charge $15.80 for less than 200 miles more service. If the Commission permits very low water-competitive rates, then all rates should come down on similar commodities for similar distances. If the rails make money on the limestone, as they claim they do, though the record does not support this, then they should be able to make money at the same rates in areas where they do not have the encouragement of barge competition.

Mr. Chairman, section 15a(2) is nothing less than a built-in escalator which, if minimum rate regulation is removed, will be used by the railroads to set rates at a high level on noncompetitive traffic so that they will have enough money to undercut the water carriers.

We would like to have this booklet of charts, demonstrating that railroad rate discrimination is nationwide in scope, introduced into the record.

These charts need little comment.

Chart 1. Sugar from New Orleans to Little Rock, Ark. pays $12.10 a ton for 436 miles of service where there is no water competition. To Cincinnati, sugar pays only $10.50 for 834 miles of service.

Chart 4. Limestone pays $4.39 a ton for 346 miles of service from Bauxite, Ark. to Baton Rouge, but only $2.40 a ton for 735 miles of service, paralleling the Mississippi of course, from Prairie du Rocher to Baton Rouge.

Chart 8. Phosphate rock pays only $4.95 a ton for 802 miles of rail service from Barstow, Fla., to Norfolk, Va., where there is water competition. Receivers in Greensboro, N.C. pay $7.44 for 667 miles of service from the same point.

Chart 10. Hydrofluoric acid pays $12.10 a ton for 1,039 miles of water competitive service between Houston and Chicago, but $23 a ton for 928 miles of service from Houston to Danville, Ill.

Chart 15. Soda ash pays $5.25 for a 653 mile haul from Baton Rouge to St. Louis and the same rate of $5.25 has been set from Detroit to St. Louis for 473 miles of service to meet competition. But South Kearney, N.J., 631 miles from Detroit, pays $10.15 a ton.

Chart 23. This is an example of what is happening as a result of the Southern Grain case (I & S 7656). Grain travels from St. Louis to Orangeburg, S.C., 847 miles, in "Big John" cars at 5-car rates for $5.27 a ton. But from Chattanooga, Tenn., where barges bring in the grain, the only rate available is an ordinary box car rate, and 379 miles of service costs $5.60. Hence, if barges carried grain to Chattanooga free from St. Louis, they still couldn't reach Orangeburg, S.C. with a rail connection.

Chart 26. This chart demonstrates the discrimination against upper lakes ore for all those interested in the economic welfare of the upper lakes regions. From the ore mines to Duluth, an average distance of about 65 miles, ore pays $1.29 a ton. For the haul by lake carrier, 882 miles, the charge is $2 a ton. For the 59-mile rail haul from Ashtabula, Ohio to Youngstown, the rail rate is $2.09. But foreign ore can get to Youngstown from Baltimore, a distance of 378 miles for $4.08 a ton.

Chart 30. Grain competitive with the Columbia River pays $3.70 a ton from Connell, Wash., near Pasco, to Portland for 325 miles of rail service. From Medford, Oreg., due south of Portland the charge is $9.60 for 329 miles of service.

Chart 31. The North Dakota farmers are complaining that grain pays $10.40 a ton for a 475-mile haul from Minot to Minneapolis. From Kansas City to Chicago, 437 miles, where there is river competition, the charge is $5.40 a ton and for 468 miles of service in "Big John" hopper cars of the Southern Railway from St. Louis to Chattanooga the charge is $3.72.

This study once again emphasizes our main contention. We have no objection to across-the-board rail reductions which give all customers the same rate for equivalent service. We only complain when a railroad reduces its rates selectively to below-cost levels where it has competition, holding rates high where it has no competition. We believe this is against the public interest and that discrimination in rates would be encouraged if the pesent legislation is passed.

We have never wavered from the belief that the railroads, the truckers, and the water carriers—and most of all the public—would best be served by a cost-oriented pricing system for transportation.

A new development since last year will interest this committee. The ICC now has, for the first time, a barge form C cost formula to place alongside the rail form A in competitive disputes. We have spent much time in helping the Commission develop this objective yardstick so that it can determine the low-cost carrier in any given situation. We are hopeful that this will fill an information gap that has been of concern to our competitors.

We are hopeful, also, that the Supreme Court decision in the *New Haven* case will be interpreted by the Commission as a requirement that fair relative cost standards must be developed and made a part of the record of every competitive rate disputes.

We agree with Prof. Carl H. Fulda, professor of law of Ohio State University, in whose study, "Competition in the Regulated Industries" appears this statement:

"Regrettably, one searches in vain for an unambiguous pronouncement of general policy with respect to various measures of compensativeness. Indeed, the reading of the decisions creates the impression that the Commission selects whichever theory appears best to fit the case at hand * * *. The transportation industry and their counsel may be entitled to something better than that without sacrificing the flexibility of the administrative process."

Reviewing the big cases, Professor Fulda's comment seems highly appropriate.

There was, for example, the Limestone case (313 ICC 71) where the issue rested on relative costs. However, no record was developed to determine the relative cost issue, despite a showing that the rail rate was below out-of-pocket cost. The ICC offered nothing better, literally, than what it called a "feeling" that the rates were compensatory. In the Tampa Coal case (I & S 7179) there

was apparent approval for a rate below out-of-pocket cost. Similarly Division II's findings in the Southern Grain case (I & S 7656) on cost seemed to say that below out-of-pocket cost rates were permissible.

Below cost competitive ratemaking, if allowed by the Commission, appears to us to be a method of allocating traffic to the railroads which they would not be likely to get if their rates had to meet the normal test of relative costs cited in the quotation of Commissioner Howard Freas in the Supreme Court in the *New Haven* case.

Reviewing the legislative history of section 15a(3), the Court said:

"In particular, Commissioner (then chairman) Freas expressed concern that if the Commission were foreclosed from considering the effect of a rate on a competing mode, it would be powerless to reject a railroad rate which covered the railroad's out-of-pocket costs, even if that rate had the effect of destroying the inherent advantages of a lower-cost carrier. He stated:

" 'Whenever conditions permit, given transportation should return the full cost of performing the service * * *. In many instances, however, the full cost of the low-cost form of transportation exceeds the out-of-pocket cost of another. If, then, we are required to accept the rates of the high-cost carrier merely because they exceed its out-of-pocket costs, we see no way of preserving the inherent advantages of the low-cost carrier'."

This seems to us to be a fair statement of the problem.

Why should this committee concern itself with the survival of the water carrier? I think this can be made plain by a simple calculation.

Last year, the preliminary estimate of the U.S. Engineers indicate that 135 billion ton-miles of transportation were performed on the rivers and canals of the United States. The average haul was 287 miles. Bearing in mind the substantial short haul of coal, sand, and gravel, I would estimate that the average fully distributed cost for this traffic is approximately one-third of a cent per ton-mile.

Let us suppose this traffic had to move by rail.

I have ascertained that the cheapest transportation performed by railroads in the three principal districts, namely, Western, Eastern, and Southern, is performed in 100-ton capacity open gondola cars of the type that the railroads would use normally for ores and coal. For the mileage block of 300 miles, the Commission reports average cost in 100-ton gondola cars as follows:

Eastern—22.4 cents per hundredweight, equivalent of 14.9 mills or 1½ cents per net ton-mile.

Southern—16 cents per hundredweight, equivalent of 11.1 mills or 1 cent per net ton-mile.

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If there were no water carrier industry, the charge which the shipping public would have to pay to move the traffic that is now moved by water, would be an average of these charges, or 13.5 mills.

The freight charge would then be somewhere in the neighborhood of $1,809 million compared to the $472 million now being paid for barge service. The difference is $1,337 million.

It is true that the barge route is frequently more circuitous than the rail service. Some allowance should be made for this. On the other hand, much of the bulk traffic cannot travel in the open gondola cars which represent the railroad's cheapest type of service. Grain, for example, must move in closed hopper or boxcars, a more expensive type of service.

Giving the railroads every benefit on comparative costs, the direct advantage of low-cost water service on the rivers and canals is at least a billion dollars a year.

The railroads have been talking about reducing rates by a billion dollars a year if this legislation is passed. If, as a result of this legislation, the water carrier industry is eliminated—as it was once before at the turn of the century—the price of freight service to the public may well go up a billion dollars a year.

This saving applies only to rivers and canals. If the Great Lakes carriers and the remainder of the coastal and intercoastal carriers are also eliminated, as we believe they would be, the increased cost of freight service would be even higher.

This is the basic issue before you. If you deem the water carriers expendable, this is the risk. Needless to say, most commodities carried by water could not afford to pay rates three times the level they now pay. Much of the grain, the steel, the ore, coal, the phosphate rock and alumina would simply not get to market at all.

I think any fair review of the role of the water carrier in the economy will demonstrate that there will be major dislocations to industry if the water carrier is badly damaged by granting the railroads a license to put us out of business.

We appreciate this additional time and hope our presentation has been helpful.

RAILROAD RATEMAKING—A CATALOG OF DISCRIMINATION

Exhibits supporting the testimony of J. W. Hershey, chairman of the board, American Commercial Barge Line Co., representing the Common Carrier Conference of Domestic Water Carriers

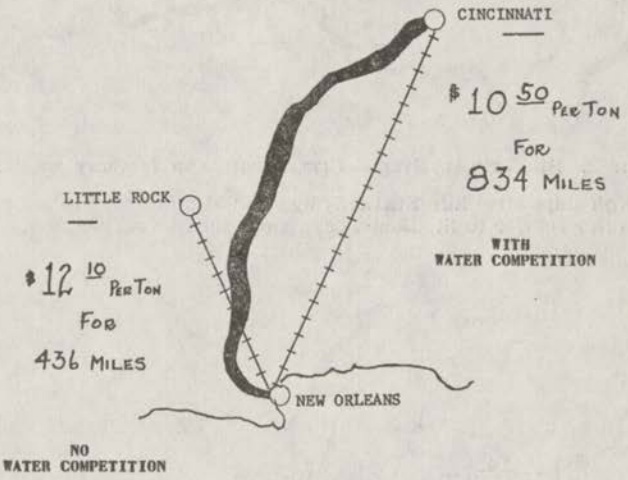

CHART 1. SUGAR—NEW ORLEANS TO LITTLE ROCK AND CINCINNATI

Cincinnati, served by water, enjoys a rail rate of $10.50 for 834 miles, while Little Rock, in the interior, pays $12.10 for 436 miles.

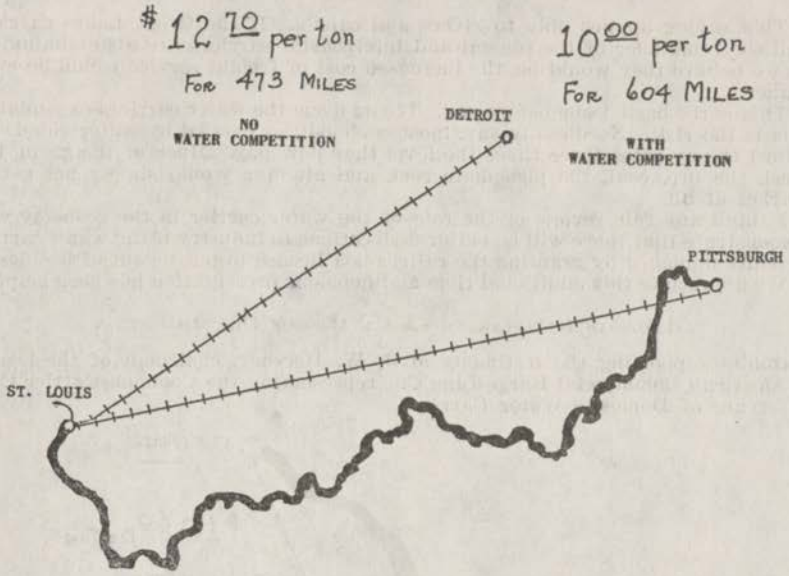

CHART 2. STRUCTURAL STEEL—PITTSBURGH AND DETROIT TO ST. LOUIS

Pittsburgh ships steel into St. Louis by rail 604 miles for $10 per ton. Detroit, with no water service to St. Louis, pays more for less service.

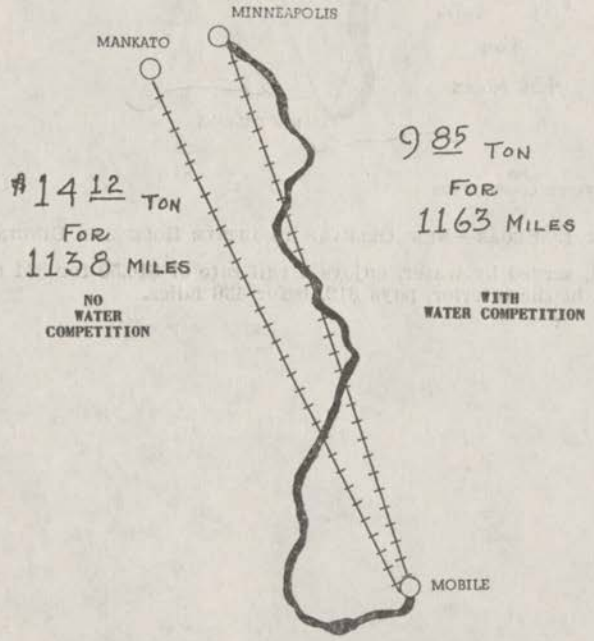

CHART 3. OYSTERSHELLS—MOBILE TO MINNESOTA

Minneapolis, with barge service, enjoys a rail rate on oystershells for chicken feed of $9.85 from Mobile. Mankato, Minn., nearby, but not on the river, pays a rate of $14.12 for a little shorter haul.

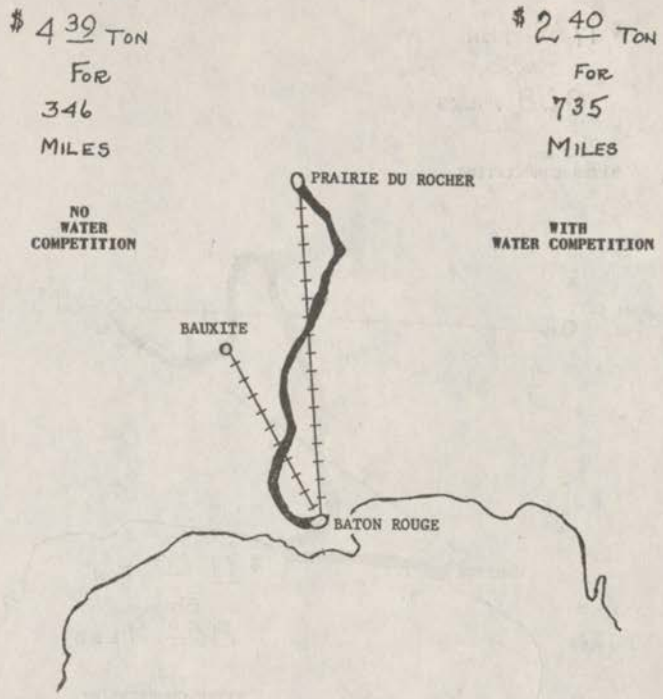

CHART 4. LIMESTONE—ILLINOIS AND ARKANSAS TO BATON ROUGE

Limestone moves from quarries in Illinois to Arkansas to a chemical plant in Baton Rouge. The Illinois quarry, on the river, pays a rail rate of $2.40 for 735 miles. The Arkansas quarry in the interior pays $4.39 for 346 miles.

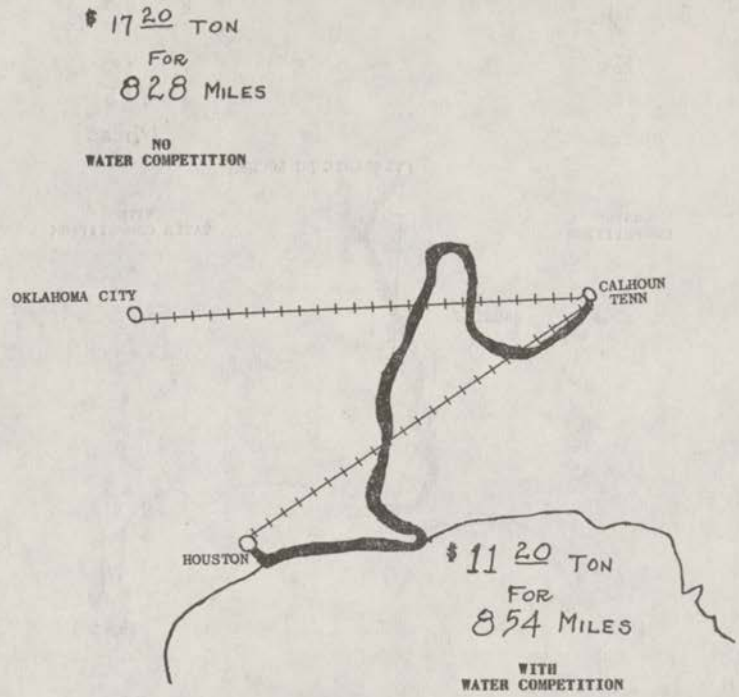

CHART 5. NEWSPRINT—CALHOUN TO HOUSTON AND OKLAHOMA CITY

There is a large papermill in Calhoun, Tenn., that sells newsprint in Houston and in Oklahoma City. At Houston the barge-rail competition has brought the rail rate down to $11.20 per ton. But at Oklahoma City, where there is no barge service, the rail rate is 60 percent higher for a shorter distance.

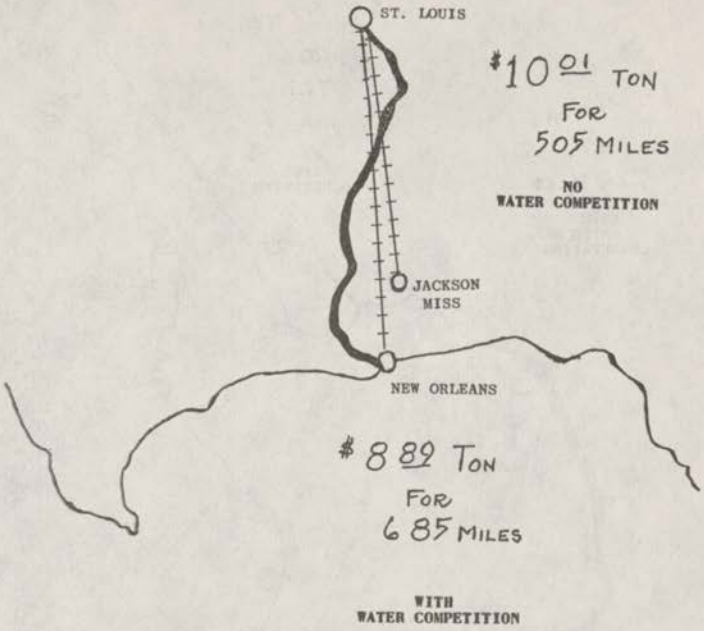

CHART 6. IRON AND STEEL PLATES—ST. LOUIS TO NEW ORLEANS AND JACKSON

For $8.89 the railroads will haul steel 685 miles from St. Louis to New Orleans, but Jackson, Miss., not on the river, has to pay $10.01 for only a 505-mile haul from the same source.

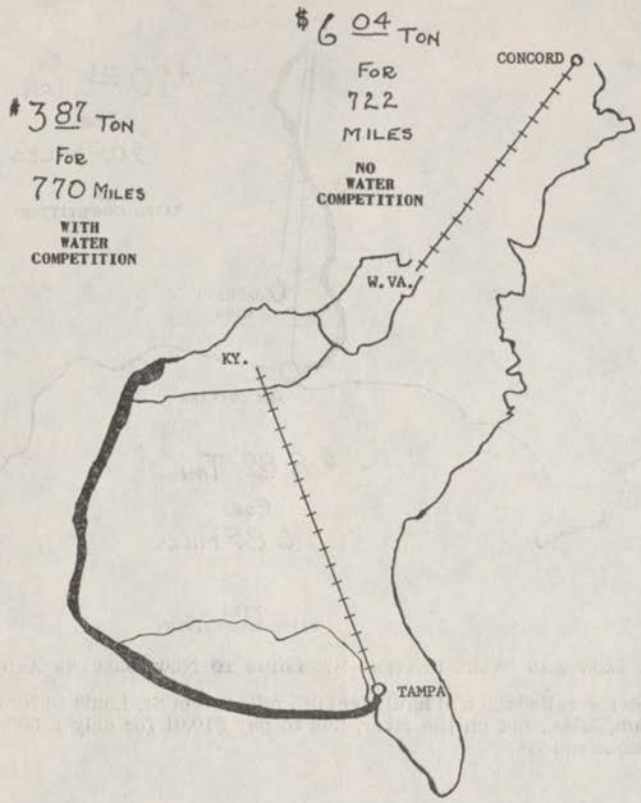

CHART 7. COAL—MIDWESTERN MINES TO FLORIDA AND NEW HAMPSHIRE

West Kentucky coal moves to Tampa by water so the railroads haul east Kentucky coal to Tampa 770 miles for $3.87. But the railroads demand $6.04 for 722 miles to Concord, N.H.

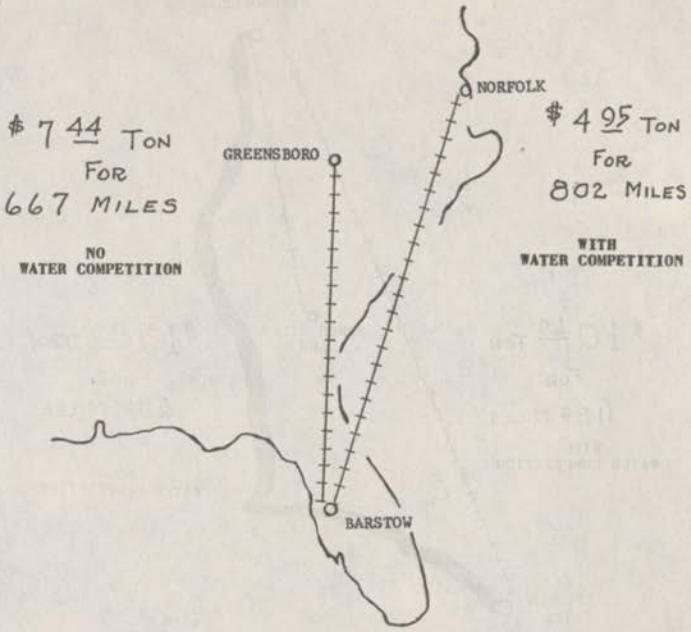

CHART 8. PHOSPHATE ROCK—FLORIDA TO GREENSBORO AND NORFOLK

Water competition on phosphate rock for fertilizer from Florida to Norfolk has brought the rail rate down to $4.95. Greensboro, N.C., only four-fifths as far, pays a freight rate half again as high.

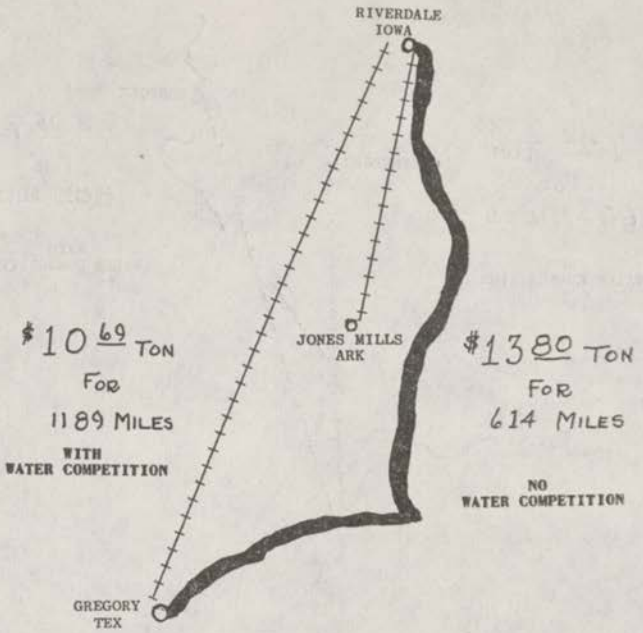

CHART 9. ALUMINUM BILLETS—TEXAS AND ARKANSAS TO DAVENPORT, IOWA

The aluminum plant at Gregory, Tex., on the water, enjoys a rail rate to the rolling mill at Davenport of $10.69 for 1,189 miles. The interior producer at Jones Mill, Ark., pays a third more for half as much rail service.

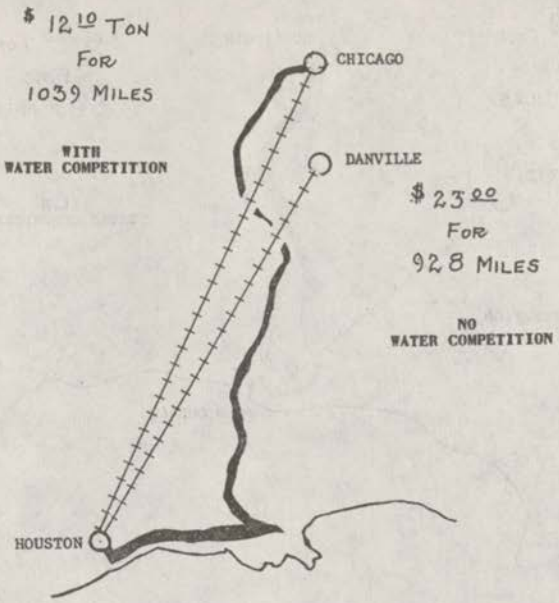

CHART 10. HYDROFLUORIC ACID—HOUSTON TO CHICAGO AND DANVILLE, ILL.

Hydrofluoric acid, widely used in metal processing, is produced in Houston. Chicago, on the water, pays $12.10 for 1,035 miles of rail service. However, the railroads demand almost twice as much to Danville for less service.

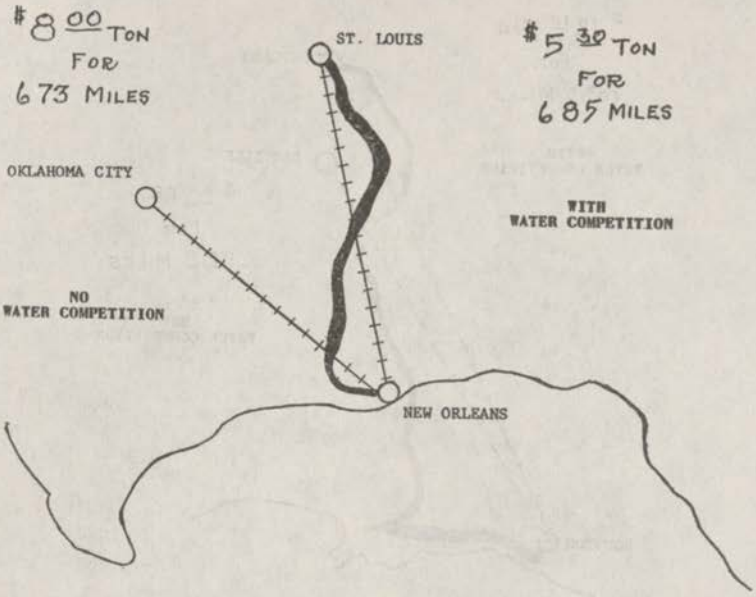

CHART 11. WHEAT FOR EXPORT—FROM OKLAHOMA CITY AND ST. LOUIS TO NEW ORLEANS, LA.

Dry Oklahoma City pays $8 to the railroads to ship wheat to the New Orleans export grain market. St. Louis, on the river, pays only $5.30 for about the same miles of rail service.

When both are competing for shipments to New Orleans, the difference comes out of the price of wheat at Oklahoma City.

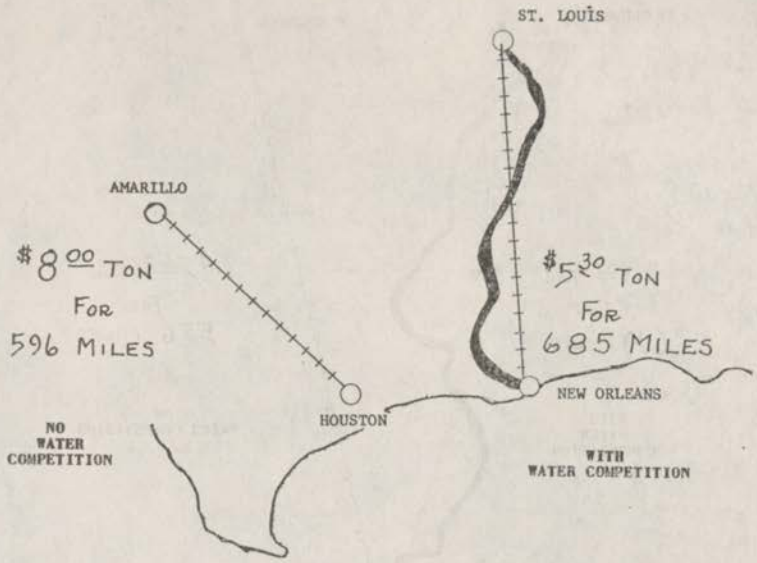

CHART 12. WHEAT FOR EXPORT—ST. LOUIS TO NEW ORLEANS COMPARED WITH AMARILLO TO HOUSTON, TEX.

Amarillo has no water service so the $8 rail rate to the nearest port is higher than the $5.30 rail rate from St. Louis to the nearest port. However, St. Louis, on the river, is almost 100 miles farther away from the export markets at the gulf. Since both are competing for the same market, the difference reduces the price of wheat at Amarillo.

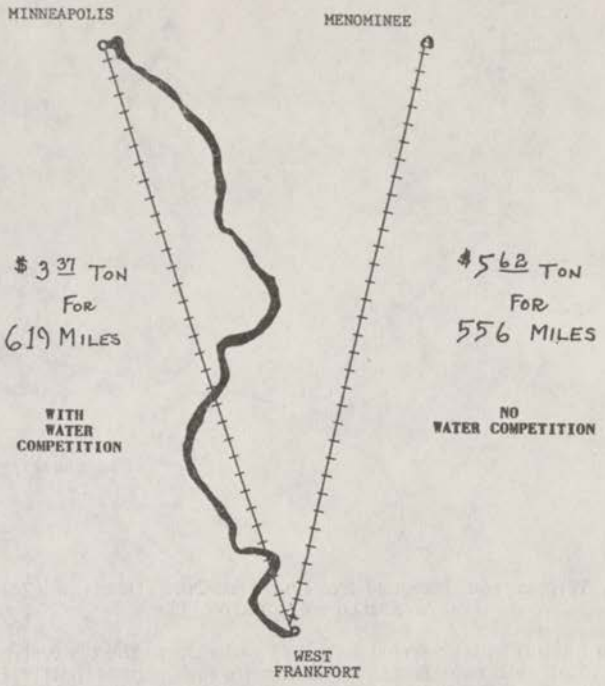

CHART 13. COAL—SOUTHERN ILLINOIS TO MINNEAPOLIS AND TO MENOMINEE, MICH.

From southern Illinois coalfields the rail rate is $3.37 for 619 miles to Minneapolis, but for only 556 miles to Menominee, Mich., the rate is $5.62.

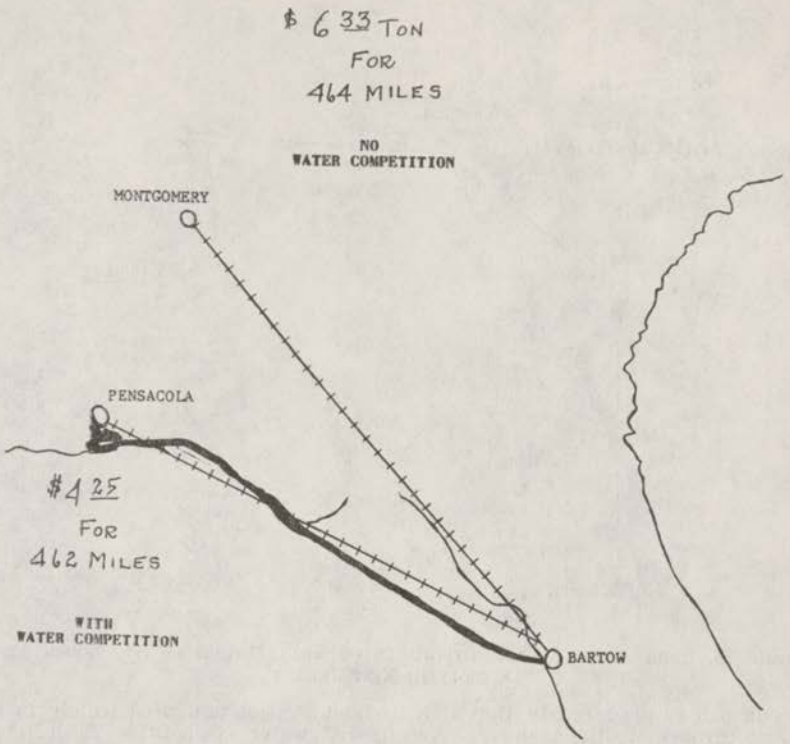

CHART 14. PHOSPHATE ROCK—FLORIDA TO PENSACOLA AND MONTGOMERY

The rail rate on phosphate rock from Florida phosphate mines near Tampa to Pensacola, on the water, is $4.25. To Montgomery, Ala., in the interior, but about the same distance, the rail rate is $6.33.

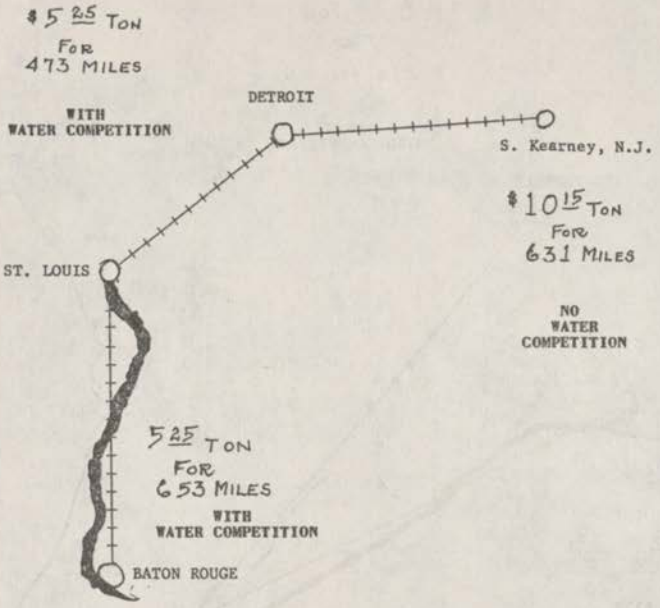

CHART 15. SODA ASH—FROM DETROIT AND BATON ROUGE TO ST. LOUIS FROM DETROIT TO NEW JERSEY

Soda ash is produced in Baton Rouge and Detroit and used widely in industry throughout the country. Because of water competition from Baton Rouge to St. Louis, the rail rate is $5.25 for 653 miles. To permit the Detroit producers to meet their competition in St. Louis, the railroads reduced the Detroit-St. Louis rate from $8.90 (for 473 miles) to $5.25, the same as the Baton Rouge rate. But they still held up the rate from Detroit to S. Kearney, N.J. to $10.15 for 631 miles.

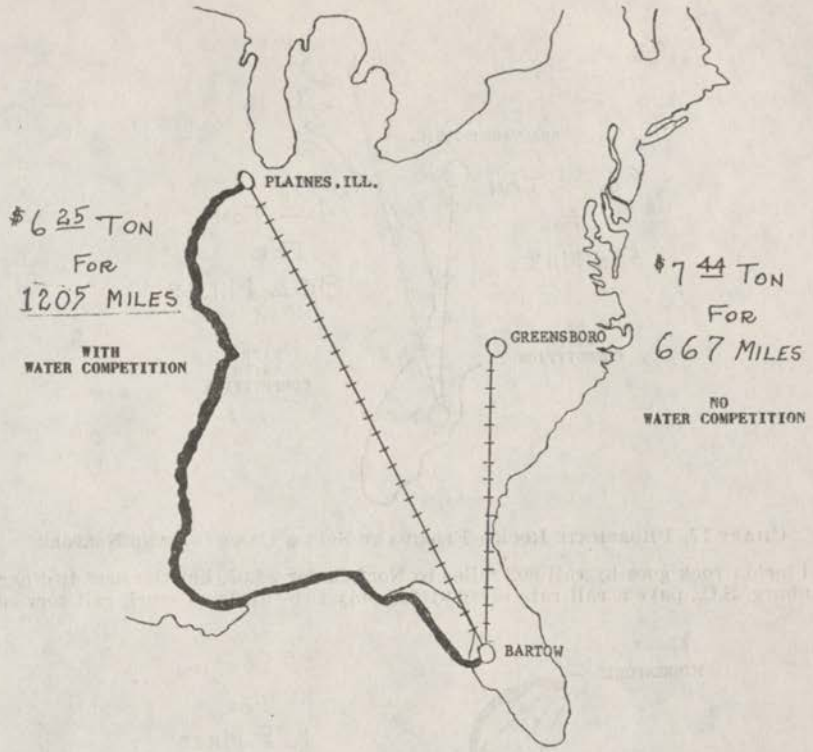

CHART 16. PHOSPHATE ROCK—FLORIDA TO GREENSBORO, N.C. AND ILLINOIS

The Southern Railway is a part of the rail route from Florida to Greensboro—667 miles for $7.44—and also a part of the route to Plaines Ill. where the railroads propose to reduce the rate down to $6.25 for 1,205 miles, less than the Greensboro rate but almost twice the distance.

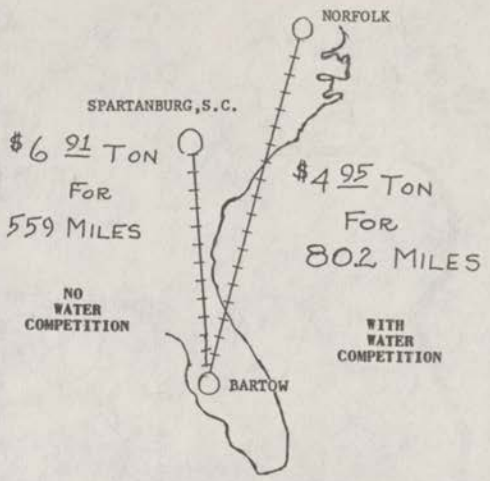

CHART 17. PHOSPHATE ROCK—FLORIDA TO SOUTH CAROLINA AND NORFOLK

Florida rock goes by rail 802 miles to Norfolk for $4.95, but the user in Spartanburg, S.C., pays a rail rate of $6.91 for only two-thirds as much rail service.

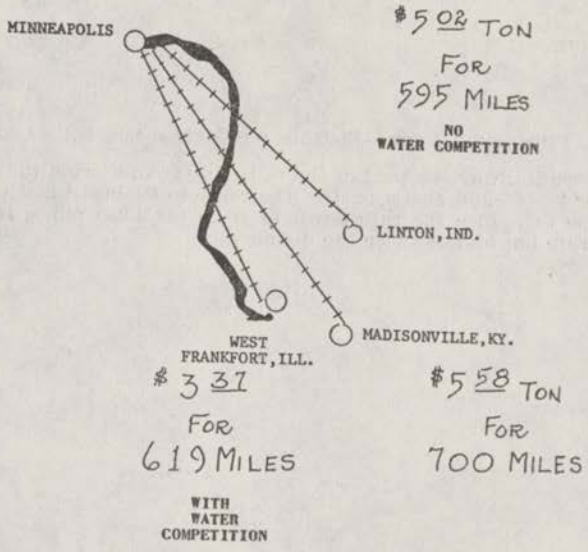

CHART 18. COAL—SOUTHERN ILLINOIS, SOUTHERN INDIANA, AND WEST KENTUCKY TO MINNEAPOLIS

Illinois mines at West Frankfort enjoy a $3.37 freight rate for the 619-mile haul to Minneapolis. West Kentucky mines at Madisonville have to pay $5.58 for a 700-mile haul. Southern Indiana mines pay $5.02 for 595 miles.

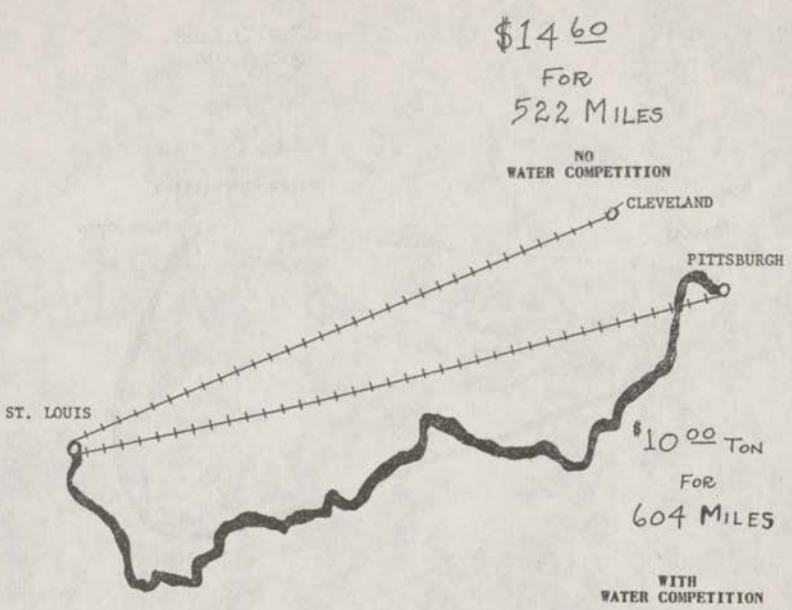

CHART 19. STRUCTURAL STEEL—PITTSBURGH AND CLEVELAND TO ST. LOUIS

Pittsburgh, on the river, pays $10 a ton for a 604-mile haul to St. Louis. Cleveland with no direct water route to St. Louis pays $14.60 for a shorter rail haul.

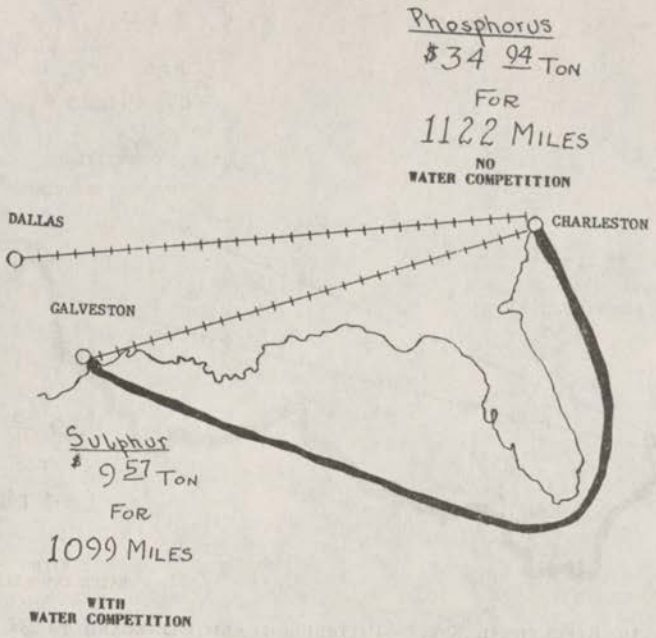

CHART. 20. SULFUR AND PHOSPHORUS—SULFUR FROM TEXAS TO SOUTH CAROLINA COMPARED WITH PHOSPHORUS FROM SOUTH CAROLINA TO TEXAS

Sulfur is produced in Texas and shipped molten in tank cars east from Galveston to Charleston, S. C. Phosphorus is produced in Charleston and shipped in tank cars west to Dallas.

The eastbound sulfur is water competitive; the rail rate is $9.57 for 1,099 miles. The westbound phosphorus, to an interior point, pays a rail rate nearly four times as high for the same distance.

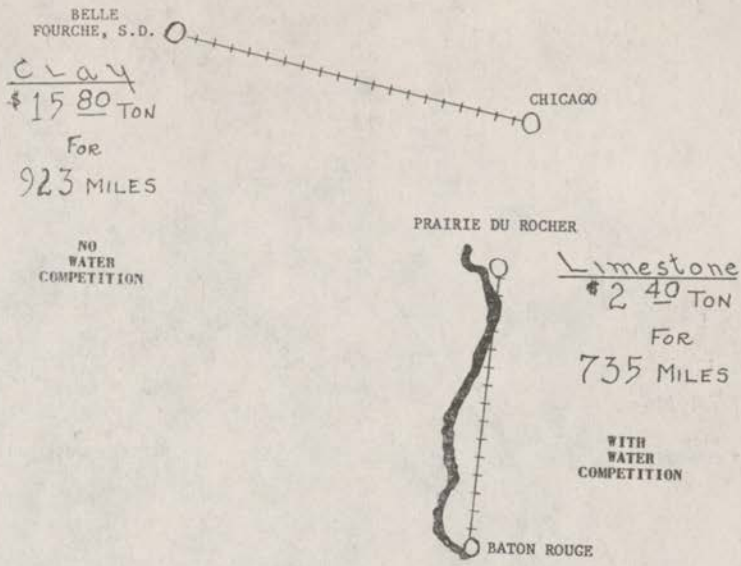

CHART 21. BENTONITE CLAY—BELLE FOURCHE, S. DAK. TO CHICAGO COMPARED WITH LIMESTONE—PRAIRIE DU ROCHER, ILL. TO BATON ROUGE

Both of these commodities are heavy loading, and of low value. Both move in large volume by railroad for comparable distances. The clay is high-rated at $15.80. The limestone is low-rated at $2.40. The limestone has water transportation available.

The shipper of clay felt so strongly about his rate, he filed a formal complaint against the Northwestern Railroad alleging the rate to be unlawfully high. An examiner's report proposes to compel the railroad to reduce the rate slightly.

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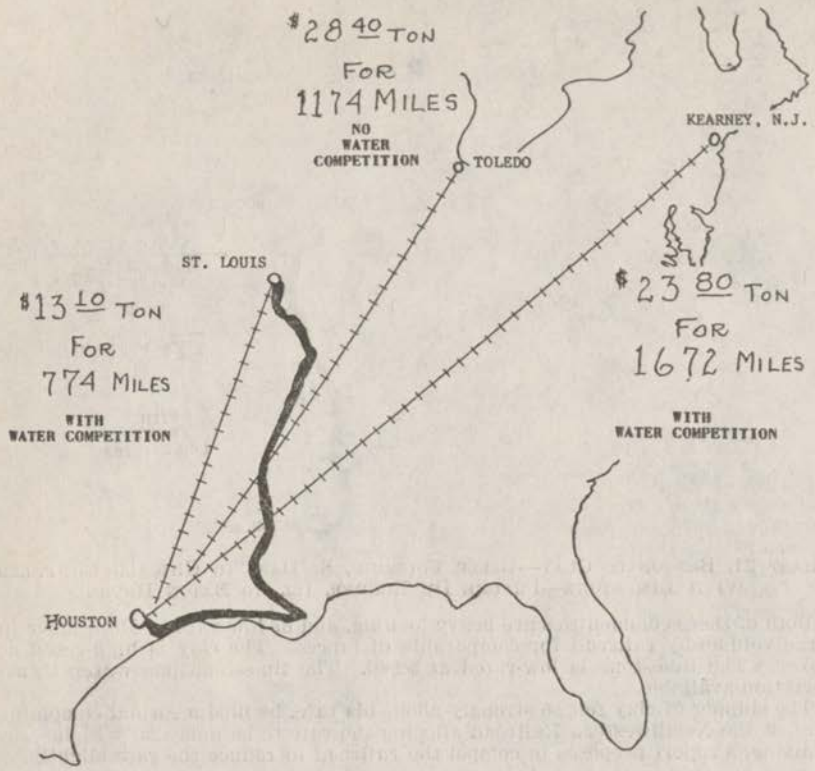
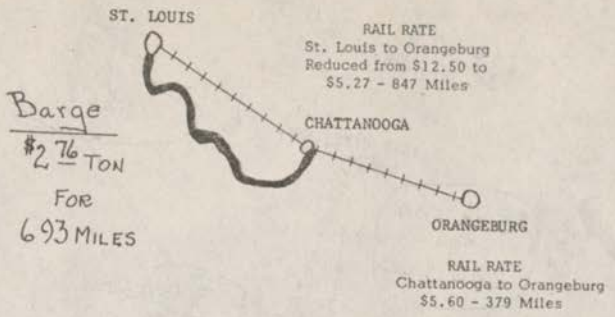


CHART 22. CARBOLIC ACID—HOUSTON TO ST. LOUIS, TOLEDO, AND NEW JERSEY

The rail rate for the 774-mile haul to St. Louis is $13.10. To New Jersey, also served by water, the 1,672-mile rail haul is $23.80. Toledo, only 1,174 miles from Houston, pays $28.40.



FORMULA FOR DESTROYING BARGE
TRANSPORTATION ON THE TENNESSEE RIVER

CHART 23. GRAIN—ST. LOUIS AND CHATTANOOGA TO SOUTH CAROLINA

In the celebrated "Southern Grain Case," the Southern Railway slashed grain rates two-thirds from origins along the Ohio and Mississippi Rivers into the Southeast. But no comparable reductions were made from ports on the Tennessee River. Consequently, under the Southern's proposal, if a barge line moved grain free from St. Louis to Chattanooga, the combination barge-rail rate from St. Louis to South Carolina via Chattanooga would be higher than the all-rail rate from St. Louis to South Carolina.

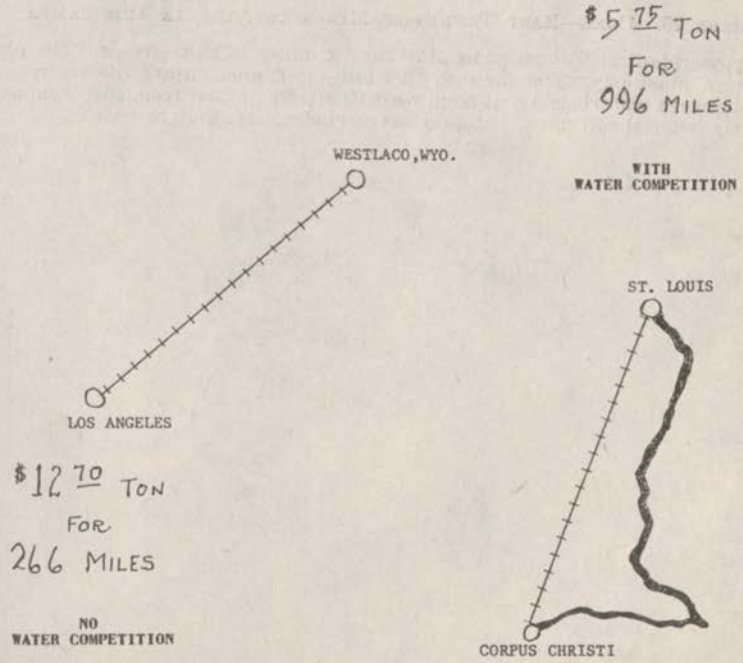


CHART 24. SODA ASH—WYOMING AND TEXAS ORIGINS

The producer in Houston, marketing his soda ash in St. Louis; pays only $5.75 for 996 miles of rail service, but the Wyoming producer, selling in Los Angeles, has to pay more than twice as much for a little less rail service.

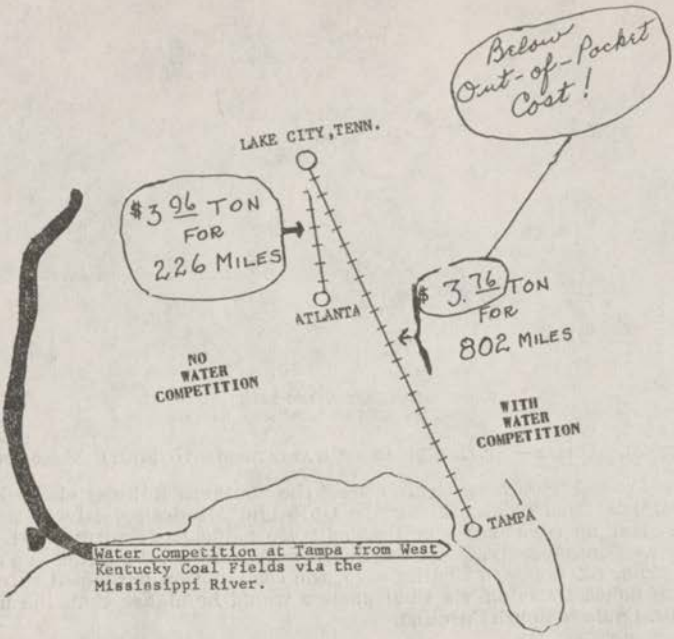


CHART 25. COAL—EAST TENNESSEE MINES TO ATLANTA AND TAMPA

The powerplant at Tampa pays $3.76 for 802 miles of rail service. The plant at Atlanta must pay $3.96 for only 226 miles. Tampa enjoys the freedom to choose between waterborne coal from west Kentucky or coal from east Tennessee at greatly reduced rail rates. Atlanta has no choice, pays high rates.

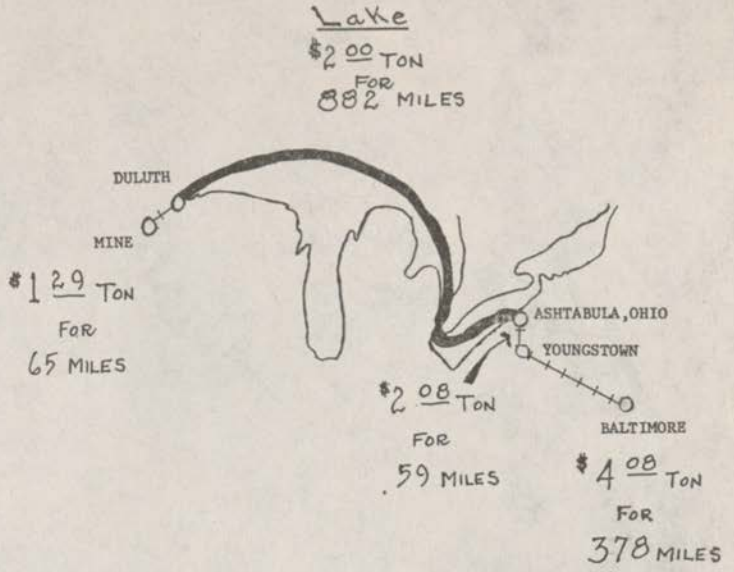


CHART 26. IRON ORE—MINNESOTA AND BALTIMORE TO YOUNGSTOWN

Iron ore comes out of the Mesabi Range in Minnesota and moves down the lakes to the steel mills in Ohio. A 65-mile rail haul to Duluth costs $1.29 (loading into ship 19 cents). The 882-mile water haul down the lakes to Ashtabula only costs $2 (unloading 52 cents). But the 59-mile haul on to Youngstown costs $2.08.

By contrast the 378-mile rail haul on import ore from Baltimore to Youngstown costs only $4.08.

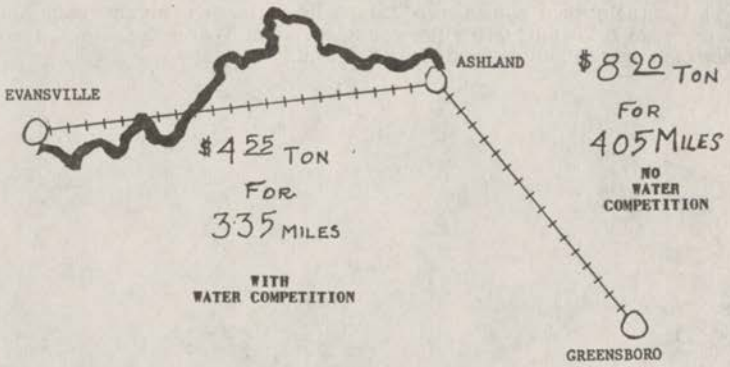


CHART 27. STEEL PLATES—ASHLAND, KY., TO EVANSVILLE, IND., AND GREENSBORO, N.C.

The Southern Railway serves Greensboro, N.C. and also Evansville, Ind. From Ashland, Ky., the rail rate on steel plate is $4.55 for 335 miles, but to Greensboro, N.C., the rate is $8.90 for 405 miles. Evansville has water transportation available from steel mills on the Ohio River. The Southern Railway has no competition to Greensboro.

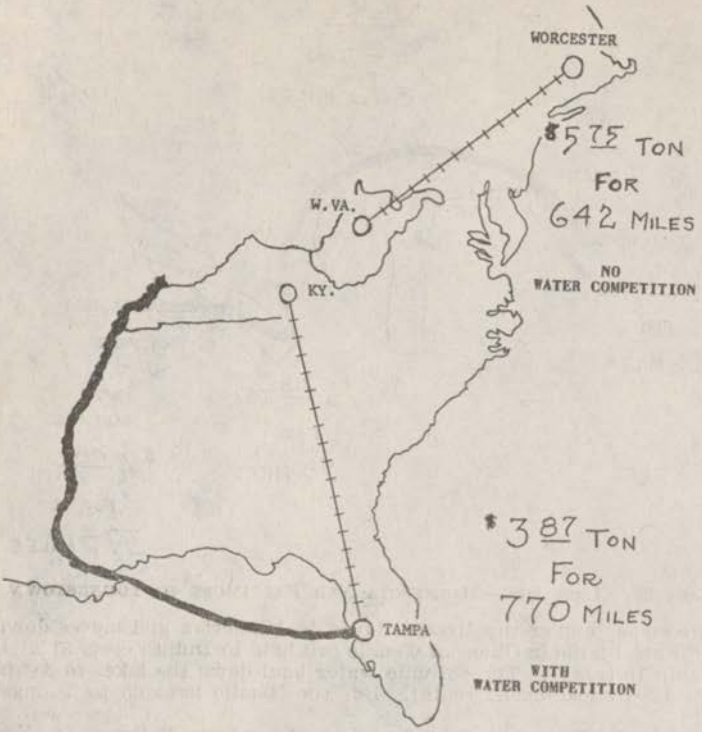


CHART 28. COAL—MIDWEST MINES TO FLORIDA AND MASSACHUSETTS

West Kentucky coal comes into Tampa by water, so the railroads haul east Kentucky coal to Tampa 770 miles for $3.87. But Worcester, Mass., pays $5.75 to bring coal only 642 miles from West Virginia.

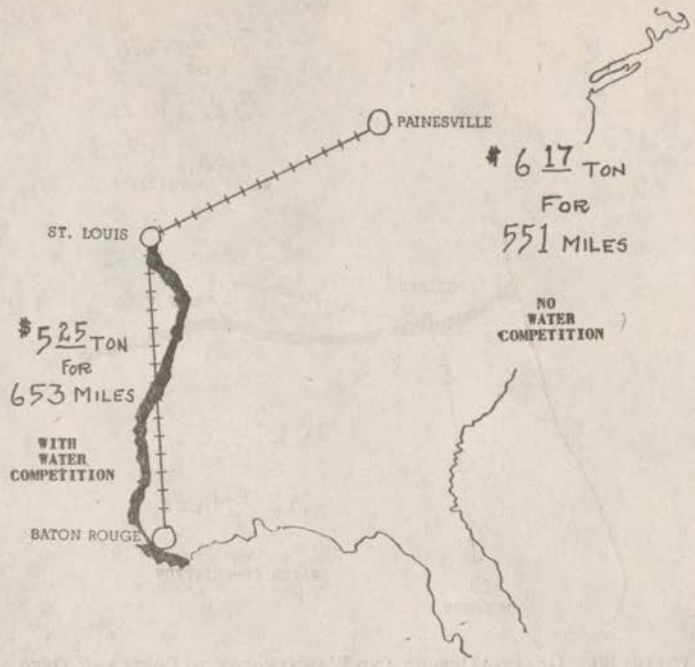


CHART 29. SODA ASH—OHIO AND LOUISIANA TO ST. LOUIS

Soda ash comes into St. Louis 653 miles by rail from Baton Rouge for $5.25. The producer in Painesville, Ohio, selling in St. Louis, must pay a higher rate for a short haul.

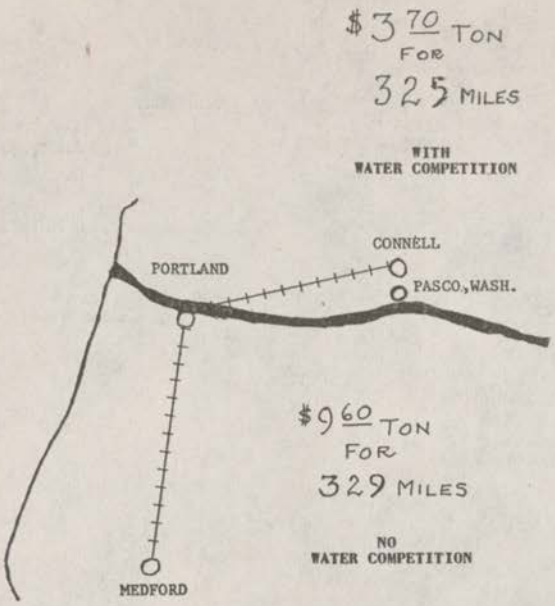


CHART 30. GRAIN—OREGON AND WASHINGTON TO PORTLAND, OREG.

Portland, Oreg., is an export outlet for western grain. From Medford, Oreg., to Portland, the rail rate is $9.60 for 329 miles, but from Connell, Wash. (30 miles from the river), the rail rate is only $3.70 for 325 miles to Portland, Oreg.

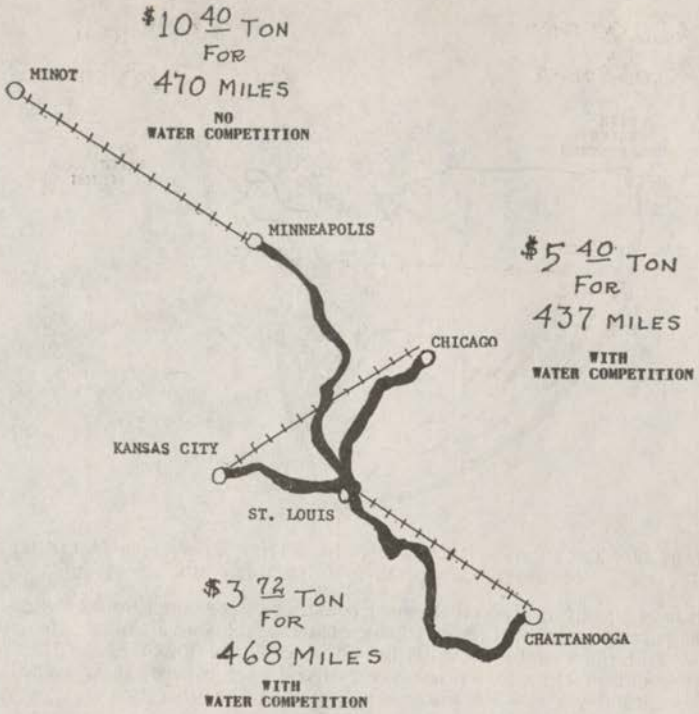


CHART 31. GRAIN—NORTH DAKOTA TO MINNEAPOLIS; KANSAS CITY TO CHICAGO; ST. LOUIS TO CHATTANOOGA

Wheat from Minot, N. Dak., pays $10.40 for 470 miles of rail service, compared to $5.40 from Kansas City to Chicago, 437 miles; or St. Louis to Chattanooga $3.27 for 468 miles. The distances are about the same, the availability of water service is the difference.

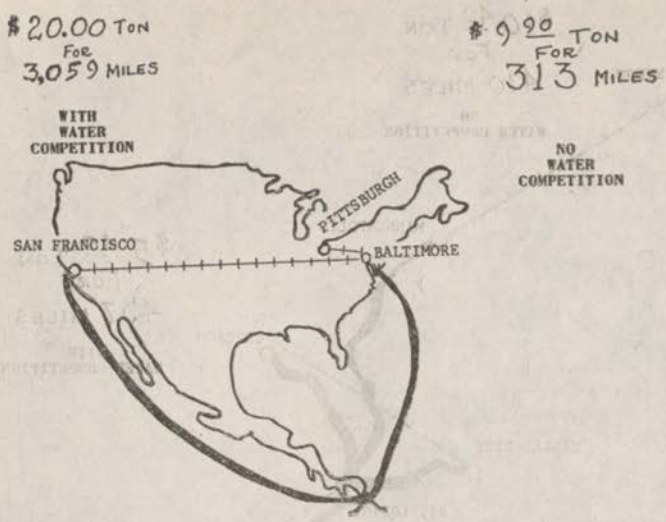


CHART 32. TIN PLATE—BALTIMORE, MD., TO SAN FRANCISCO, CALIF., AND PITTSBURGH, PA., TO BALTIMORE, MD.

Tin plate is manufactured on the east coast, the west coast, and at Pittsburgh. When the eastern steel mill ships to the west coast, 3059 rail miles, the rail rate is $20.00. But the Pittsburgh mills have to pay $9.90, 50 percent of the rate for only 10 percent of the service shipping to the east coast. Intercoastal water service, available via the Panama Canal, makes the difference.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Mr. Chairman, I would like to ask him one thing about this Southern grain case. There is a lot I do not know about it, but I am very much interested in it because it vitally affects my area of the country.

If I interpret your chart correctly, page 23, Mr. Hershey, it would appear that the Southern proposes to haul grain from St. Louis to Orangeburg, S.C., at $5.27 a ton; is that correct?

Mr. HERSHEY. Yes, sir, that is correct, sir; $5.27 per net ton.

Mr. KORNEGAY. At the same time they would charge $5.60 a ton to haul it from Chattanooga, Tenn., into Orangeburg?

Mr. HERSHEY. That is correct.

Mr. KORNEGAY. In other words, 33 cents more per ton for about half the distance or less than half the distance; is that correct?

Mr. HERSHEY. Yes, that is right. If you want to use a convenient yardstick, you will find that the rate from St. Louis to Orangeburg figures out 6 mills to net ton-mile; from Chattanooga to Orangeburg 15 mills per net ton-mile or 2½ times as great.

Mr. KORNEGAY. Is that on the same quantities of grain?

Mr. HERSHEY. Yes, sir.

The CHAIRMAN. This is the degree with which they discriminate against the route from Chattanooga to Orangeburg.

Mr. KORNEGAY. It was on the basis of this situation that the protest was filed by the barge lines?

Mr. HERSHEY. Yes. There are a number of other issues in the case.

I think again—Mr. Howard King, who is the operator of the barge line more closely affected, is more of a student of that case, and I

am sure he is going to want to discuss it in his direct testimony and will be available for questioning.

Mr. KORNEGAY. He is coming on?

Mr. HERSHEY. Yes, sir.

Mr. KORNEGAY. All right. I have nothing further of you. Thank you very much.

The CHAIRMAN. Mr. Hershey, thank you very much for your statement; we are glad to have it.

Mr. HERSHEY. Thank you, sir.

(The following letter was later received from Mr. Hershey:)

AMERICAN COMMERCIAL BARGE LINE CO.,
Houston, Tex., May 9, 1963.

Congressman OREN HARRIS,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN HARRIS: I wish to thank you very much for according me the privilege of again appearing before your committee in opposition of H.R. 4700. You will recall that I indicated that the core of my testimony was the exhibit entitled, "Railroad Rate Making, a Catalog of Discrimination."

Although my testimony did not include reference to the second alternative suggested by the President; namely, an intelligent extension of regulation into areas where there is real competition between modes, I would like to register my concurrence and approval of this course.

I am sure that you will find that the common carriers on the rivers have a reasonable attitude toward any compromise which will preserve rather than erode all of the controls against discrimination and destructive predatory practices now extant in the law. Of course, the examples which I gave in my testimony and the exhibits thereto, which could be expanded many times, point up the fact that either through administrative or legislative changes there must be significant progress made toward "equal prices for equal services to all users."

Needless to say, this standard should be applied to all modes of transportation. Today, it appears to be applied in the strictest sense only in the area of pipelines which, incidentally, is unquestionably our most prosperous mode of transportation.

Thanking you again for your and your committee's courtesy in receiving my testimony, I am,

Sincerely yours,

J. W. HERSHEY.

The CHAIRMAN. The next witness is Mr. John L. Weller.

Mr. Weller, I believe you are president of Seatrain Lines, Inc.

STATEMENT OF JOHN L. WELLER, PRESIDENT, SEATRAIN LINES, INC.

Mr. WELLER. Yes, sir, Mr. Chairman. I appear today in behalf of the coastwise and intercoastal segment of the Common Carrier Conference of Domestic Water Carriers in opposition to H.R. 4700. We are the people who operate on the oceans along the coast and between the coast. This bill, as you know, would exempt railroads, water and highway carriers, hearings, briefs, everything completed, but on which no decision has been issued.

Those are Mr. Leighty's words and I think he knows what he is talking about. We do not even have to look back into history for examples of railroad rate wars, not only with rail competitors, but also with each other. Recently, for example, the Southern Railway was permitted by the Commission to make drastic rate cuts on grain under the guise of technological improvement—the use of high-capacity hopper cars. The other railroads with which the Southern competes have matched these reductions with ordinary boxcars, so that as to them there is a rate cut of over 50 percent without any saving in expenses, even of a theoretical nature.

I think it is significant that the Southern has field with the Interstate Commerce Commission, a petition which is now pending before the Commission, to suspend the rates of these competing railroads. As one of its reasons, the Southern points out to the Commission that effectiveness of the proposed boxcar rates on grain would create "the needless dissipation of carrier revenues and establishment of noncompensatory rates will place an unwarranted burden on other traffic, contrary to the public interest." I do not know whether or not the Southern's allegations in this protest are meritorious, but I do point out that if H.R. 4700 became law, there would be no agency to whom the Southern could protest, and no one to protect the public interest, which it claims is threatened.

The inevitable result of enacting H.R. 4700 into law would be a series of cutthroat railroad rate wars, not only with other forms of transportation, but with other railroads. Many of these railroads, particularly in the East, are already in weakened condition as a result of rate warring to date, and the result would be a series of bankruptcies.

I would deplore this, not only because of a general interest in the welfare of all transportation, but because my company, as a rail-and-water carrier, is dependent upon a number of these railroads for its connecting services, and is much interested in their solvency. We are particularly concerned at the moment with the financial status of the New York, Susquehanna, and Western; the Erie-Lackawanna; and the New Haven, all of which are our connecting lines and are not included in the proposed "Three System" eastern mergers. I do not see how they could survive such free-for-all, cut-throat competition with the big systems as is proposed in this legislation.

For these reasons, as well as those set forth in my testimony last year, I strongly urge the committee that H.R. 4700 not be enacted into law.

Mr. Chairman, could I add to this one comment which arises because of the question I heard asked from the gentleman from North Carolina? He referred to section 4(2), I think it is, of the act.

Mr. KORNEGAY. Yes, sir.

Mr. WELLER. And I understand, Congressman, that many years ago in a case in the Supreme Court, *Skinner* v. *Eddy*—and I could not tell you when—the Supreme Court ruled that in effect that section does not mean anything. It ruled that when a reduced rail rate has been approved by the Commission under section 41, section 42 has no effect. In other words, the rail rate can be raised again without showing changed condition other than the elimination of water competition.

But to go beyond that, Congressman, there have been in the coastwise business, as you probably know, all kinds of coastwise water carriers have gone out of business. I do not believe you have any coastwise service left in your State of North Carolina. The railroads have raised rates since those water carriers disappeared, and I do not know of a single case where the Commission has done anything about it, one reason being that the Commission usually does not stop anything like this without a protest from somebody and the water carrier is dead, he is not there to protest.

Thank you Mr. Chairman.

Mr. CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. You say you do not remember the name of that case?

Mr. WELLER. I remember the name, *Skinner* v. *Eddy*. I do not have the——

Mr. KORNEGAY. Citation.

Mr. WELLER. But I can send it to you if you would like a citation.

Mr. KORNEGAY. That is all right. I can look it up. Thank you very much. That is all.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. No questions. Thank you.

The CHAIRMAN. What is your company?

Mr. WELLER. Seatrain Lines, sir.

The CHAIRMAN. Is that a water transportation or rail?

Mr. WELLER. Yes, sir; it is water transportation. We operate vessels, ships between New York and New Orleans and Texas cities, the Houston area. We currently also operate between New York and Savannah, but we are going to be forced to suspend that service this month and we carry——

Mr. DINGELL. Why?

Mr. WELLER. Because of difficulty with railroad rates.

The railroad generally, with whom we connect in Savannah, southern railroads, the Southern in particular, follows a policy of keeping very high rates into the port of Savannah, and preventing traffic from connecting with us.

But to go back to your question, Mr. Chairman, we carry traffic in freight cars on the ships and also in highway containers.

We are a common carrier.

The CHAIRMAN. Yes.

Is your shipment regulated?

Mr. WELLER. Yes, sir, completely.

The CHAIRMAN. You have to file tariffs with the Commission?

Mr. WELLER. Yes, sir.

The CHAIRMAN. Thank you very much. We are glad to have your statement. I believe you presented all of it.

Mr. WELLER. That is all, yes, sir. Thank you.

The CHAIRMAN. We appreciate your presentation.

Mr. WELLER. Thank you.

The CHAIRMAN. Mr. Howard King.

Mr. King, identify yourself for the record please sir.

STATEMENT OF HOWARD G. KING, PRESIDENT OF ARROW TRANSPORTATION CO.

Mr. KING. Yes, sir. Mr. Chairman and members of the committee, my name is Howard G. King. I am president of Arrow Transportation Co., Sheffield, Ala.

Arrow Transportation Co. is the oldest common carrier barge line on the Mississippi River system and the largest domiciled on the Tennessee River, but we are a small business concern as far as size goes. Arrow is about ninth in size in the common carrier inland barge industry.

To give you an idea of just how small Arrow is, I give you this comparison with the Southern Railway, since it is the one which we are opposing in the so-called Southern grain rate case. The Southern Railway's atfer-tax net income is a little over 10 times our gross income. If the Southern today is paying Mr. Brosnan the same salary they paid Mr. DeButts before he retired, his salary is a little more than our net income. I am not attempting to be facetious.

Also, we are a part of an industry that is not large. The Southern Railway is considerably larger than the entire Inland Waterway common carrier bargeline industry.

I do not have a prepared statement, Mr. Chairman, but, in October of 1962, I made a speech at a transportation forum at the University of Alabama, in Tuscaloosa, Ala., in which I set forth our company's views in regard to legislation of the type proposed in H.R. 4700. With your permission I would like to file a copy of that in the record if I may.

The CHAIRMAN. Very well, you may do so.

(The material referred to follows:)

THE PUBLIC'S STAKE IN FAIR CONTROLS ON RATE REDUCTIONS—THE LOW-COST PRODUCER'S POINT OF VIEW

(Address by Howard G. King, president, Arrow Transportation Co., Sheffield, Ala.)

"Should common carriers be given more freedom in setting their own rates and charges?" Assuming our question to apply to those common carriers by rail, motor, and water regulated in whole or in part by the Interstate Commerce Commission pursuant to its authority under parts I, II, and III of the Interstate Commerce Act, my answer is "No." They should be given somewhat less freedom than they now have in fixing their own rates and charges. In particular, the bulk exemption in section 303(b) of part III of the act should be repealed and the agricultural exemption in section 203(b) of part II should be rewritten to confine it to the farm traffic it was intended to cover. This would eliminate the regulatory disadvantage of which common carrier railroads logically complain and would at the same time leave intact a regulatory system which, far from being archaic and outmoded as contended by some carriers, is the sound result of time and experience. Then, operating under such regulation, the common carriers should exhibit that transportation statesmanship and cooperation with each other to which the public is entitled and the act intends, and which will give the public the best, most flexible, and most economical service it is possible to provide. In short, it is time that transportation executives prove that the public did not misplace its trust when it granted common carriers that license to engage in business which is almost unique to that industry. And, when I say "public," I mean "public," not just common carriers and those shippers with power enough to force distorted rate adjustments.

We are not alone in needing to become statesmen. Our country's business executives must permit that same statesmanship from their traffic and transportation officers. Shipper traffic executives know the ultimate disaster common carriers face so long as they must squeeze the last drop of profit from common carrier rates, but they are helplessly caught in that web until their managements also realize the danger. Until they do, carrier will be played against carrier until Government ownership is the only thing left. And from Government ownership of transportation to Government ownership of other industry is a very short step.

HAVOC LADEN ALTERNATIVE

A totally havoc-laden alternative to what I have suggested is the proposal to take from the Interstate Commerce Commission its power to fix minimum reasonable rates on bulk and agricultural commodities. That magnificent folly must be avoided. We must not let ourselves be misled by the emotion-packed

propaganda of its proponents which totally obscure the facts. Offered to us as a mode equalizing ratemaking freedom, it is, in truth, a transportation gallows on which all of us will hang if it becomes law. Let's look at the facts.

That proposed legislation would permit common carriers to make bulk commodity and agricultural commodity rates at low as they please. As proposed, there is no limit to how far down they could go and absolutely no other effective control.

We have been told by proponents that effective control would still exist in the proposed application of the Sherman Act and the prohibitions against undue discrimination, undue prejudice, and undue preference in the Interstate Commerce Act. That is not true. We have been told that any railroad foolish enough to reduce rates for the sole purpose of destroying a competitor could be ruined by the Interstate Commerce Commission by the simple expedient of refusing to let such rates be increased after the competition was destroyed. That is not true. Proof of both points? Simple. A railroad determines the commodity on which a competitor's life depends. It reduces its rates on that commodity to whatever level is necessary to destroy the competitor. It gives those reductions uniform application over its entire system. What happens? The Sherman Act is not violated. No undue discrimination, undue prejudice, or undue preference is created. The rates are below minimum reasonable and far below maximum reasonable. The competitor dies, the rail rates increase to not more than maximum reasonable, and both the Commission and the courts are powerless. In short, the weapon is that of the early trusts and is no longer possessed by any industry in this country. Yet, there are those who honestly believe it is a proper device of destruction for common carriers to possess.

GREED AND GOOD JUDGMENT

Remember this; science and technology have made great gains in recent years, but human nature has not changed. It is just as difficult today as it ever was for man to draw the line between greed and good judgment. There has never been a time in history when unrestrained power was not abused.

Man is only human, and reasonable control of his appetites and ambitions is the reason for almost all law. And when he is given the protection of and permitted to act through that sometimes enormous artificial creature of statute, the incorporated public utility, transportation or other, reasonable restraint is mandatory. Hence, our present body of transportation law. While not altogether perfect, it is the finest regulator system the world has yet seen and is the result of fine minds applying as fairly as possible the teachings of time and experience. A good sober look at the result will convince you that, with the proper regulation of dry bulk commodities by water and agricultural commodities by truck, common carriers have ample freedom to set their own rates and charges and that their real trouble is that they are not making the best use of the freedom they have.

Under the law as it exists today a common carrier may set its rates and charges at any level it chooses so long as they are reasonable, and are not unjustly discriminatory, unduly prejudicial, unduly preferential, or unfairly destructive of competition. So when we say we must have greater freedom to set our own rates and charges, we are really saying we are entitled to freedom to make rates and charges which are either unreasonable, unjustly discriminatory, unduly prejudicial, unduly preferential, or unduly destructive of competition. The mere statement of the proposition refutes it.

TRUE CAUSE OF RAILROAD PROBLEMS

We are told that the condition of the railroad industry is critical. Is that true? Not altogether. The statement treats the railroad industry as a whole. The average performance of all railroads is not good. But we have some very prosperous railroads, and we have some railroads that are in deep difficulty. The same thing is true of many industries. We should not scuttle our system until we find out why part of the industry is in trouble. Some railroad spokesmen say excessive regulation is the chief cause of the ills of the railroads. I do not agree. The chief cause is change in methods of production and consumption and relocation of both industry and population. These changes have left us with surplus railroad plant for which there is no longer any economic use. Speaking before the Newcomen Society earlier this year, Mr. Stuart T. Saunders, president of the Norfolk & Western Railway Co., said: "Another important development

is the merger movement which has swept the industry since the Norfolk & Western merged with the Virginian Railway late in 1959. Mergers offer one of the best opportunities for eliminating unnecessary and duplicating facilities and obtaining better utilization of the most efficient lines of railroad. Most of our railroad mileage was built during the 19th century before regulatory laws were enacted governing the construction of new lines. As a result, there is much surplus railroad mileage in this country today, and this is especially true of the East. Of the approximately 225,000 main line miles now in service, 23,000 miles, or less than 10 percent, carry 50 percent of our total freight ton-miles, and at the other extreme 67,000 miles, or about 30 percent, carry only 2 percent of the total freight business."

RAILROADS CHANGE APPROACH TO REGULATION

We have been told that the railroads have been regulated almost to death. I disagree. I have heard the railroads cry "Wolf," and complain about overregulation ever since I entered the transportation field over 30 years ago. But have those of you who can remember with me taken time to notice the change in their tune? When I first heard it, they sang that overregulation had them in trouble, because they were not permitted to make their rates high enough. Now they sing the same song, but it is because they are not permitted to make their rates low enough. The reason is pretty obvious. When barge and truck competition were of relatively little importance, the railroads wanted the public to pay all the traffic would bear and then some. Now that that competition is being felt, the railroads want permission to destroy it by making unreasonably low rates. Both positions are unsound. Obviously the public should not be required to pay unreasonably high rates. Barge and truck competition do much to prevent that. Also, it is shortsighted for the railroads to want to destroy barge and truck competition. As anyone at all familiar with industry knows, barge and truck transportation have contributed much to the growth of industry, and that same industry creates traffic for the railroads. As a matter of fact, most of the customers our company serves give the railroads a great deal more business than they give us. Speaking at the Ohio Valley Improvement Association convention in Cincinnati earlier this month, Dr. Marvin J. Barloon stated that the increase in river traffic since World War II has not hurt the railroads and that so-called river valley railroads have gained more tonnage since World War II than those not parallel to the Mississippi River system of waterways. In the 1950–60 decade the paralleling roads gained 9 percent in tonnage versus a gain of but 1 percent for all other railroads.

RECORD SHOWS ICC RESTRAINTS INFREQUENT

We have been told that it is harder to reduce rates on a single commodity on a single railroad than it is to increase rates on all commodities on all railroads. In making that statement, the reference was to the so-called *Southern Grain Rate* case, I. & S. docket No. 7656, now before the Commission. I do not propose to argue that case here, because this is not the proper forum. But I do want to make this point. Proponent publicity regarding that case leaves the casual reader with the impression that all rate changes must be approved by the Interstate Commerce Commission, that the Commission is opposed to all rate reductions, and as a result, ratemaking freedom is strangled. That is not true. Common carriers are free to publish any rates they choose so long as they are reasonable and are not unjustly discriminatory, unduly prejudicial, unduly preferential, or unfairly destructive of competition. The vast majority go into effect unchallenged. During the 2½ years from January 1, 1960, through June 30, 1962, 831,942 tariffs were filed with the Interstate Commerce Commission. Only 9,107, or about 1 percent, were protested. Of these, only 1,801 were rail tariffs, of which only 52, or less than one one-hundredth of 1 percent of the total number of tariffs filed, involved bulk water transportation. Less than half of those, only 22, were suspended, and only 6 more were investigated by the Commission without suspension. Eight of the 28 were still under investigation in September. In eight, one side or the other withdrew. Five were approved. Only seven involving water-competitive bulk traffic were disallowed, and five of those were because the rates were found to be so low as to be noncompensatory or because the proponent did not put in a case to defend his rate. Does that sound like strangulation of ratemaking freedom? Certainly not. While the Commission may on rare occasions bring rates into litigation on its

own motion when there is very strong reason to believe the law has been violated, it is generally true that rates are adjudicated by the Commission only in properly brought adversary proceedings. The mere fact that rates are protested does not mean that they will be suspended and investigated by the Commission. The protest, when measured against proponent's reply, must convince the Commission that there is good reason to believe the rates violate the law; in other words, that they are either unreasonable, unjustly discriminatory, unduly prejudicial, unduly preferential, unfairly destructive of competition, or some combination of those things. Such a protest began the *Southern Grain* case. The carrier complaint was quickly supported and amplified by all the Nation's major grain markets, by farmer and shipper groups, and by other interests in the Southeast. The issue will be decided by the Commission and possibly by the courts. This does not constitute an unreasonable restraint of ratemaking freedom, but because reductions are popular, emotionally directed propaganda can make it seem so. It isn't easy to shoot Santa Claus, even if he is booby-trapped.

We have been told that the railroads need more ratemaking freedom, particularly freedom to reduce rates to any level they choose, to take full advantage of the technological advances they have made in the last 20 years. That the real reason is to destroy competition is apparent, I think, from the fact that in those 20 years of technological advance, average rail revenue has increased from 9 mills per ton-mile to nearly 1½ cents per ton-mile while during the same period average barge revenue has declined slightly.

LOW-COST OPERATOR IN DANGER

As the low-cost operator on the transportation scene, we have only one fear: that a higher cost operator will be allowed to go below his costs to undercut us. Already, under the present rules, rates far below rail cost have been permitted by the Interstate Commerce Commission. As Mr. C. E. Childe demonstrated in his statement before the Committee on Commerce of the U.S. Senate in opposition to the minimum rate bill, discriminatory pricing, where a low rate is permitted on traffic that is barge-competitive and a very high rate permitted elsewhere for identical service, is widely practiced. This combination of discriminatory and below-cost pricing has already virtually destroyed the coastwise and intercoastal shipping industry and is daily squeezing every other low-cost water service to death. It works like this: Assume the largest steel company in the country is operating at 60 percent of its capacity. Assume also that the normal price for its steel is $100 a ton, and full cost is $90. From the purely selfish point of view of the steel company, discriminatory pricing of its product, if allowed, might be attractice. If permitted to cut its price to $50 a ton, below its full cost, where it had severe competition, it might capture all the volume. Where it had less intense competition, a cut to $85 a ton might get all that business. Where it had no competition at all, it might charge $150 a ton. By such pricing, it would be easy for the steel company to destroy competition. Of course, no industry would be allowed to do this under the present antitrust laws. But this is the railroad system of pricing and without minimum rate control, it would indeed run rampant, and would, I firmly believe, bring us to Government ownership more surely than almost any other path we could take.

MARGINAL PRICE THEORY UNSUPPORTED BY FACTS

We have been told that railroads can take additional volume at a marginal price because of their excess capacity. They claim to have such large fixed charges that an increase in volume can be carried at below full-cost rates and add to their net. Hence the record should show that when the railroads increase their volume, for example, 10 percent, their expenses should rise much less than 10 percent. When their traffic declines 10 percent, their expenses should, according to the theory, remain relatively constant. But Mr. Childe examined 25 years of railroad statistics and found that the theory does not work out in practice. An increase of 10 percent in volume is accompanied almost exactly by a 10-percent increase in expenses. A decrease in volume of 10 percent results in a decrease in expenses of 10 percent.

We have been told that the "mumbo-jumbo" which barge operators are peddling to the effect that railroad rates do not reflect fully distributed costs is self-serving and camouflages their extraction of higher than necessary charges from the public. Economical barge transportation on the Tennessee River is

the sire of the grain tonnage into the Southeast which the Southern seeks to capture in order to destroy us. Doesn't it seem a little strange that higher than necessary charges could create a tonnage so important that the Southern is willing to invest millions of dollars in equipment and reduce its rates by almost two-thirds in order to capture it? The fact is that barge rates on grain are reasonably related to cost and that's why they are low enough to bring about the enormous growth of this important tonnage over the past 15 or 20 years. The railroads have not told you that for years the bargelines have been trying unsuccessfully to get the railroads to join them in the movement of this important tonnage—join them by publishing reasonable ex-barge rates on grain from the Tennessee River ports to destinations in the Southeast. Such an adjustment would benefit the bargelines, the railroads, and the public, but for nearly 12 years now the railroads have kept this matter in litigation before the Commission and the courts and economical barge-rail service is still not available to the public, although the act clearly intends that it should be.

EXEMPTION REPEAL WILL HELP PRIVATE CARRIAGE PROBLEM

We believe repeal of the bulk exemption in section 303(b) of part III and the rewriting of the agricultural exemption in section 203(b) of part II of the Interstate Commerce Act will go a long way toward solving the problem of the growth of private carriage. We agree with the railroads that this is one of the most serious problems facing the independently owned transportation industry. The common carrier can provide more frequent and cheaper service except where a private company has a lock-in two-way haul of its own goods. Only the very largest of the Nation's corporations normally can be expected to have enough volume to achieve this situation. But the exemptions provide the opportunity for the private operator with a one-way haul to go into the "for hire" market at uneconomic rates to cut the throats of the common carriers. Once remove the exemptions, and large blocks of traffic, now lost to private carriage, will return to the common carrier railroads, bargelines and trucklines.

The railroad industry does not seem to have a clear grasp of the proportions of traffic handled by the various branches of the industry. One railroad spokesman, in attempting to prove how badly off the railroads are even went so far as to say they only handle 8 percent of the total. He omitted to mention that he included, in the total expenditures for transportation, the enormous expenditures of the public on automobile travel. The familiar proportions should be repeated here, to emphasize once again that the railroads account for less than half of the total workload expressed in ton-miles, and that a program aimed solely at benefiting them should not be at the expense of those who do most of the work.

	Percent
Railroads	43
Trucks	23
Water carriers (9.5 percent inland barge)	17
Pipeline	17

COMMON CARRIERS ON RIVERS HANDLE 40 PERCENT OF TRAFFIC

But it is when they deal with the proportion of traffic on the inland rivers handled by the regulated carriers that the railroads fall into their most serious error. They describe their decline in their proportion of the traffic handled, and the rise of the trucking industry in the normal measure of transportation service, ton-miles. But having described both these services correctly in terms of apples, they then proceed to compare apples with oranges. Barge service is not described in terms of ton-miles but of tons and the regulated bargelines are dismissed as handling only 10 percent of the traffic. This is no minor error. It distorts, beyond recognition, the true role of the regulated bargeline in the handling of traffic.

On the basis of our estimates, it may surprise you to hear that the regulated bargelines handle a larger proportion of inland water traffic than the regulated trucks control of the total traffic on the highway. For the Mississippi-Ohio-gulf canal system, the ICC regulated carriers handle about 40 percent of the total traffic, measured on the basis of ton-miles. The regulated trucks, on the other hand, are said to handle 35 percent of the total highway traffic.

Why the difference between participation in tons versus ton-miles? Simply this: Barge tonnage counted by the Corps of Engineers includes huge semimining operations where sand and gravel and oyster shells and other products are taken from the bottom of the river and transported to the bank or a mile or two up and down the river to storage areas. These are entirely local operations, and there is no conceivable need to regulate them as transportation.

EXTENSION OF REGULATION IS PRACTICAL ALTERNATIVE

Obviously, the discrepancy between 40 percent and 10 percent is important because it bears directly on to the question of the chances of success of any campaign to extend regulation to presently exempt barge carriers. If those who handle 40 percent of the traffic are for regulation, and if there is no intention of regulating the purely private carrier operations, then the hard core of the independently owned exempt operators may account, as an estimate, for perhaps 20 percent or less of the total picture. And these operators may well be amenable to persuasion if proper safeguards are offered them in the form of grandfather rights. Hence, the possibility of extending regulation to the rivers which, if you look at one set of statistics, seems hopeless, may, when measured by the true yardstick of transportation service—ton-miles—be a problem which is fundamentally different in character and far more possible of resolution to the satisfaction of everyone. Despite the official defense of the status quo by certain exempt carriers, there is one objective and infallible sign that, indeed, they anticipate that regulation will be extended and may not be too unhappy at the prospect. Every exempt carrier in the business is scrambling today—and has been for the past 2 years—to place a barge in as many river ports as possible to establish his future rights under grandfather provisions.

Again, I emphasize that what is most needed by common carriers and shippers today is high caliber, cooperative statesmanship. Nothing else will give us the fairly priced and well coordinated multimode transportation system to which the public is entitled, which the national defense demands, and of which we are fully capable. We must not make the mistake of gaining short-term rate advantages for large shippers and short-term competitive advantages for large financially powerful carriers by action, which, in the long run, will damage or destroy us all and drive surface common carriage, and ultimately all industry, to Government ownership.

Mr. KING. My experience in traffic management and transportation covers over 30 years. I was admitted to practice as a class B practitioner before the ICC in 1932. I have represented shippers, have been on the staff of the Alabama Public Service Commission, have worked for a railroad, have worked for a truckline, and have been engaged in the bargeline business with my present company since 1941.

Because Arrow is a small business that it literally fighting for its life in the Southern grain rate case which you have heard something about here today, I would like to give you a little history of that case, so you will know what has happened.

This committee was told last year by the president of the Southern that the Southern was having more trouble trying to reduce the rate on one commodity than all railroads have trying to increase the rates on all commodities. The point was made that the Southern Railroad grain case at that time had been in litigation about 6 months. But he did not tell you the whole story.

The economical movement of grain into the Southeast, which gave rise to its large poultry industry, was generated by the bargelines. Grain first moved by barge into the Tennessee Valley in 1939.

When that movement began, we recognized the fact that the lowest cost method, based on cost of performing service, of getting that grain into the interior was to move it by barge to ports on the Tennessee River, like Chattanooga, Tenn., and Guntersville, Ala., and move it beyond by rail.

Most of the grain that moves to the Tennessee River ports does not stop there. It goes on to inland destinations—some of it is processed at the ports into feed or flour, but even that then moves beyond the ports.

Because that is so, we tried to get the railroads interested in providing a reasonable level of grain rates from the Tennessee River ports, so they could participate with us in this traffic. As we read the Interstate Commerce Act, we though Congress intended that the two types of carriers should cooperate, and that is what we wanted to do.

Although such proportional rail rates were in effect from river crossings on the Ohio and Mississippi, and no rates of comparable level had ever been published from the Tennessee river ports, the railroads refused—so, a complaint was filed with the Interstate Commerce Commission. That complaint, ICC docket 30744, has now been in litigation before the Commission and before the courts for over 13 years, and, although we won, both before the Commission and in the courts, we still have no ex-barge rail rates from the Tennessee River ports.

The Commission has prescribed such rates, but, instead of complying with the order, the railroads chose instead to treat the order as an alternative one and attempted to cancel transit privileges at the river ports.

The Commission rejected those tariffs and gave the railroads 60 days within which to comply with the order as issued. That, after 13 years, is the way that matter stands now.

When the court's decision several years ago made it apparent that docket 30744 would be decided in our favor, the Southern apparently became interested in trying to destroy barge transportation on the Tennessee River, and take this traffic off the water altogether. So, when the north wall of Wheeler lock at mile 275 collapsed, effectively cutting the Tennessee River in two for barge transportation, and we were forced for a period of some 9 or 10 months until the lock was rebuilt to transfer cargo around or over the dam from barge to barge in order to take it on to ports beyond, the Southern put into action what it had evidently been planning.

They published the extremely low, reduced, multiple car rates that are at issue in the Southern grain rate case.

They published them without ever filing them with the Southern Freight Association, although section 5(a) protects such associations for meeting to fix rates, the railroads do not want section 5(a) repealed by H.R. 4700, and it is normal practice that, when railroads want to make any rate adjustment, they file a proposal with the Southern Freight Association, or whichever association they belong to, and after it goes through the usual procedure it is either approved or disapproved. If it is disapproved, the line that proposes the rates still has the right of independent announcement, and can go ahead and publish if it wishes to. In any event, everybody has had notice.

In this case, the Southern did not file anything with the association. It simply published the rates in tariff form. So far as I know, this is the first time that was ever done. It not only caught us and the shippers by surprise, but it caught all the other southeastern railroads by surprise, so much so that they immediately had to busy themselves and try to meet those rates with their own tariff publications;

but, they did not know what the Southern's formula was. So, they had to try to compute the formula for the establishment of rates via their own lines.

In the process some of the rates they published deviated a little from the Southern formula and had later to be revised after they found out what the formula was. The formula for the rates was a constant 42 cents to cover terminal charges plus 5.73 mills per ton-mile for the line haul distance. But the minimum rate was $2.40 a ton even if the haul was only 10 miles.

Thus, even if the Commission were to require the Southern to apply the same scale of rates from the Tennessee River ports, the port cities would not be helped because for short hauls that $2.40 per ton is a higher rate than the rates now in effect.

Needless to say the rates were opposed not only by the bargeline industry but by quite a few other interests, and the longest continuous hearing on record before the Commission took place.

The Commission expedited the case as much as it could, and that is why it kept the hearings in continuous session. They were recessed, if I remember correctly, only twice, once because one attorney died of a heart attack and once because the Southern Railway attorney had an ulcer attack and was confined to the hospital for a while.

The Commission tried to set this case down for hearing very soon after the protests were filed, but the Southern Railway was not prepared to go forward with its defense. I think the reason is indicated by the fact that as stated in the decision in the case, which is now on appeal to the entire Commission, the survey the Southern made of shippers in the Southeast to determine how much tonnage it might expect under its proposed rates was not made until several months after the rates were published. Apparently in the publication of the rates, management was ahead of the rest of the staff and they had to have time to catch up.

Also, although in the Southern Railway's original reply to our protest they admitted that these rates were published for the purpose of meeting barge competition, in the time that intervened between the publication date and the hearing date, the Southern Railway acquired a survey that was made, I believe, very largely by the Department of Agriculture relating to the exempt movement of grain into the Southeast by truck. At the hearing, Southern reversed itself and contended that its rates were made to meet truck competition, not barge competition.

A big complaint of the railroads and others in the common carrier transportation industry is that we have no way of knowing what unregulated trucks charge. Thus it is strange that the Southern arrived at rates that were so exactly suited to driving barges off the river if the purpose was to meet such truck competition. We think that barge competition was and still is the real reason for the rates.

Be that as it may, the hearings concluded before the Commission and Division 2 in its decision found the rates on 900- and 1,800-ton minimums not justified. They also found a car substitution rule which would have let the Southern use boxcars instead of big-John cars when big-Johns were not available, not justified.

But they did approve the 450-ton rates for application in big-John cars only. The rates that had been published by other Southern car-

riers for application in boxcars because they did not have big-John cars were condemned, although those other railroads put in cost studies which agreed almost exactly with cost studies put in by the barge costs experts which showed that for all distances beyond 100 miles it was cheaper to perform the service in boxcars than in the big-John cars.

In a petition for reconsideration filed on behalf of the L. & N. and other railroads those roads confirm what we have always believed, that the Southern's big-John car is not really a technological breakthrough. It is just a bigger railroad car, railroad cars have been getting bigger for the last 20 or 30 years, and this happens to be the largest covered hopper now in use. Consequently, the railroads other than Southern are trying to get permission to put the multicar rates in for application via their lines as well via the Southern's and for application in boxcars as well as in the big-John cars.

A few months ago, shortly after Division 2's decision was rendered, as I recall, the Southern Railway published single car rates, which at the hearing they had promised to publish, on a level 120 percent of the multicar level.

The CHAIRMAN. Mr. King, may I interrupt? I know that is a very interesting story and all this, but you are talking about a matter of regulation before the Commission which the Commission has heard after all these years. How does that relate to the problem that we have here?

Mr. KING. Mr. Chairman, what I——

The CHAIRMAN. I tried to be as tolerant as I can, but we are not in a position to sit here and try that case all over again on the hearings on this legislation. If you have any way to relate it to this legislation I think it would be proper.

Mr. KING. Mr. Chairman, I only have a few more words to say on this subject and then I can relate it to this legislation and show you what I mean.

When the Southern published these single-car rates, the other railroads published the same rates for shipment in boxcars because they did not have big-John cars.

The Southern's rates did not include switching charges at origin or destination. Thus, if the traffic originated in St. Louis but on a line other than the Southern, there would be a switching charge. If destined to Birmingham to a consignee not on the Southern there would be a switching charge. But the other carriers absorbed switching charges in their publication. That enabled them then to meet exactly the competition of the Southern. In other words, instead of Southern having a lock on the traffic from a shipper on the Southern in St. Louis to a consignee on the Southern in Birmingham, the other carriers could get the same business because they would absorb the Southern's switching charges.

The Southern immediately filed a protest with the ICC and made the statement just quoted by Mr. Weller that this was an unnecessary dissipation of revenue and unfair competition and that sort of thing.

The point I am trying to make with all this story, Mr. Chairman and members of the committee, is this: Once given the authority to do so the railroads will attack each other just as quickly as they will attack us.

Now, there is no question but that they can put us out of business if they are given unrestrained authority to reduce rates. We are dead, as a matter of fact, if these grain rates I am talking about are ultimately approved. Do not misunderstand me—I am not trying to try the case here nor am I casting any reflections on the Commission's handling of the case. I am just stating facts. If those rates are approved Arrow Transportation Co. will be out of business on the Tennessee River, because grain represented, at the time of the hearing, 80 percent of our total revenue and 65 or 70 percent of our tonnage. Today it does not represent quite as large a percentage of our tonnage but it represents about the same percentage of our revenue.

The reason it is not as much of our tonnage as it was at the time of the hearing is that we have developed a little 10-mile coal haul that involves a heavy tonnage but little revenue. Grain is still the backbone of common carrier transportation on the Tennessee River and if this move on the part of the railroads succeeds, common carrier transportation on the Tennessee River is dead.

Look at the position we would be in if H.R. 4700 were the law. The Southern could not only have long since put into effect the rates that they propose, but they could publish lower rates if that is what it took to do the job. They could do that in spite of the fact that Division Two admitted that the barge-rail route to much of the Southeast was the low-cost route unless you considered public costs. Nowhere in the act does it say anything about considering public costs.

The Congress, you gentlemen know, has had that question before you as a legislative matter. If public costs are to be considered, the Congress, not the Commission, should say so, and say how. There is no way for the Commission to even know what they are.

All this is just evidence of how one big carrier with marginal pricing or below-cost pricing of its service can drive another and smaller carrier out of business.

The reason that a big railroad like the Southern can afford to do this in this case is because grain in 1960, which I believe was the last year they had figures for in this case, amounted to less than 1 percent of its total revenues. It is not important to them as a revenue producer. I do not mean that a rightminded business man would want to throw that much money away. But it is an amount of money that he can afford to disregard to get rid of a competitor and in the process make it possible for him to increase rates on commodities not now moving by barge but the rates on which are held down because barge transportation exists.

We have quite a number of commodities moving to or from points on the Tennessee River at rail rates much lower than they would be if there were no barge transportation.

So that is our big problem, gentlemen. That is what we are up against here. I am firmly convinced that if this legislation passes there are only three possible courses that can be followed. The railroads will first reduce their rates to get rid of competition. Then they could exercise enough restraint to keep them reduced and try to make up the difference on noncompetitive traffic, but past history indicates that is not what they would do.

What they would do would be one of two things. They would either raise their rates again after the competition is gone (and the fact that

it is easy to get into the barge line business would not help because under this proposed law the day after a barge line went into business the railroads could reduce their rates again and the barge line could not hope to amortize its investment—nobody would gamble any money under those circumstances) or, based on long experience in this field, this is what I seriously think would happen, the railroads would use that weapon on each other and we would go back to exactly what we had before 1920 when you here in Congress so wisely gave the Interstate Commerce Commission minimum ratemaking power. At that time, if you remember, the railroads were driving each other into bankruptcy and the situation was serious.

I believe, gentlemen, quite firmly that this is the surest road to Government ownership of common carrier transportation in the United States we could possibly take.

One last thing that I would like to say and I will close. I would like very much to have you gentlemen read the dissenting opinion to the decision of the Supreme Court, No. 430, October term, 1962. The title of the case is *Arrow Transportation Company et al.* v. *Southern Railway Company et al.*

I do not have the volume number but it appears to begin on page 429.

I appreciate the time you have given me, gentlemen. This is my first experience before your committee, and if I have taken more of your time than I should, I am sory, but our little company is on the gallows. All we are waiting to see is whether the Commission will spring the trap, whether the courts will, or whether Congress will do it by passing this law, but anyone of the three could cause our bankruptcy.

The CHAIRMAN. Mr. Kornegay, do you have any questions?

Mr. KORNEGAY. No, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Just one.

Do you think if we put into the law that any rail rate reduced could not be raised might prevent the rails from instituting a cutthroat rate?

Mr. KING. No, sir, I do not. I will tell you why.

I think you would run into the same thing that we ran into in this case that we are in now. The railroad could very easily pitch the case on unregulated truck competition or something of that kind, and the fact that water competition was gone would not make any difference. They could still go up. You might find a way to phrase such a law but offhand I do not know what it would be.

Mr. YOUNGER. That is all.

The CHAIRMAN. Your great trouble is the problem you are having under regulation, that you have taken quite a while to explain here.

Mr. KING. Mr. Chairman, may I answer that?

The CHAIRMAN. No, if you are going to take a lot of time again.

Mr. KING. I am extremely sorry, sir, if I have irritated you. This is terribly serious to us.

The CHAIRMAN. You have not irritated me. In the statement you have been talking here for so long was what happened under regulation. We have a problem here.

Mr. KING. That is perfectly correct, but as Captain Ingersoll pointed out we are in a period of flux and the Interstate Commerce Commission has not had us under regulation too long. There is a lot we have to learn and we think we can make it. Without regulation we are just going to create more unregulated carriers rather than more common carriers, and I was under the impression that the purpose of any legislation would be to strengthen common carriers, not destroy them. I may be wrong. Thank you.

The CHAIRMAN. Thank you very much.

Mr. J. H. Williams.

Mr. Williams, you might identify yourself and proceed.

STATEMENT OF J. HOWARD WILLIAMS, JR., PRESIDENT OF REBEL TOWING CO.

Mr. WILLIAMS. Thank you.

My name is J. Howard Williams, Jr. I am president of Rebel Towing Co., 6105 England Street, Houston, Tex., a contract water carrier exclusively engaged in the transportation of liquid commodities in bulk. I am here to tell you of my company and its attitude toward provisions contained in H.R. 4700 and H.R. 4701. I sincerely appreciate the opportunity to appear before this committee to present our views concerning this legislation.

At the outset, let me state that I lack full knowledge and understanding of the details of legislation in force or proposed and its effect on the various modes of transportation used in this Nation. You gentlemen are eminently more qualified to properly evaluate the problems of our transportation system and to attempt to solve these problems. We must depend upon you for the protection of our interests and those of the general public, and I am confident that you will do a creditable job, fair to all those concerned.

Undoubtedly there are many companies in our inland waterway industry which have problems and operations similar to ours, if not identical, but I speak only for our company. There are approximately 40 families dependent upon Rebel Towing Co. for their livelihood, and most of these employees know no other trade. We have a very real fear that a substantial change in our competitive situation or in our operating costs will add these men to our national unemployment rolls.

Rebel Towing Co., as I have said, moves only bulk liquids of which the major portion is gasoline and fuel oil. We also move a rather substantial tonnage of petrochemicals and other chemicals, and a lesser quantity of molasses and animal and vegetable oils. We occasionally operate from Corpus Christi to Carrabelle, Fla., in the Gulf Intercoastal Canal, and on the Mississippi, Ohio, and Missouri Rivers and their tributaries. Our primary operation, however, is from various Texas and Louisiana gulf ports to the Pittsburgh, Pa., area. In our business we own and operate two 3,200-horsepower towboats and 13 barges, and in addition, operate an occasional rented boat or boats and 4 rented barges.

An estimated value of the equipment which we own is $2,300,000, all of which is pledged to secure substantial indebtedness. The average number of rented pieces of equipment would be valued at about

$400,000. I am confident that those institutions which have loaned us money to purchase this equipment are also very much interested in our future.

Ours is a progressive company and we are proud of the growth we have experienced and the efficiencies we have effected in recent years. Our fiscal year ends on June 30, and last year we had gross income of approximately $1,200,000; this year we expect to gross $1,500,000 and next year we anticipate $1,800,000. In the past 18 months we have invested approximately $1,700,000 in new equipment, both for expansion and for the replacement of older inefficient equipment. Even though our operating costs per ton mile have decreased during this period, our percentage of gross revenue resulting in profits has remained constantly in the area of 5 percent.

This points up the fact that the cost of transportation of commodities borne by our customers has steadily decreased, while the services they receive have improved. This has resulted, I must admit, primarily from the pressure of competition of other water carriers similar to ourselves.

Our transportation rates vary from 1.75 mills per ton mile to 3.25 mills per ton mile. The rates depend not only upon the competition experienced, but also upon the type of equipment and the preparation required for handling of specific cargoes, the area of operation, the quantity of the product to be moved, and the frequency of such transportation required by the shipper. In the competition between water carriers, a company must maintain a compensatory rate schedule and a high degree of operating efficiency to show profits. In our industry there have been fatalities of companies which have failed to recognize this fact. Fortunately for us, there are no companies with sufficiently great cash reserves to long survive either inefficient operations or less-than-compensatory transportation rates.

It is my understanding that H.R. 4700 and H.R. 4701 propose to subject us to additional competition from the railroads. The inherent safeguards against destructive competition in the transportation of bulk commodities which are now in force would no longer be effective if this legislation is adopted. The railroads are not reasonable competitors for our company for at least two reasons. First of all, their resources appear to be unlimited when compared with our own. Secondly, the railroads are not restricted to developing their gross income from transportation along a restricted area such as a river, and can substantially, if not completely, cover losses incurred from water-competitive operations with profits from the transportation of cargoes inland.

While deregulation of rail rates on bulk commodities would temporarily benefit shippers using the waterways, it would penalize all shippers who do not have waterways available to them, and would, I am confident, eventually penalize the shippers initially benefiting from the rate wars. Under present legislation, it is my understanding that there is a tremendous difference between water paralleling transportation rates per ton mile and inland transportation rates per ton mile. This difference has been reported to me on specific commodities which we handle such as molasses, vegetable oils, and petroleum wax. Even under present regulation, we have lost tonnage to the railroads on molasses, methanol, and some petrochemicals, which losses convince me

that given the opportunity, the railroads could obtain all of our tonnage.

It has been suggested that predatory and monopolistic rate practices by the railroads under deregulation could be prevented through the safeguards contained in present antitrust statutes. With the information given to you concerning our own finances, which I repeat are probably similar to most of the carriers in our industry, you can easily understand our inability to effectively use such safeguards while continuing in business.

The most persuasive argument that I have heard for the deregulation of railroad transportation rates on bulk commodities is the apparent inconsistency of keeping the railroads regulated as to these commodities while their competitors, the bargelines, remain unregulated. This position becomes unstable, however, if it is recognized that there is small area for true competition between the various modes of transportation. It seems apparent to me that truckers should direct themselves to relatively short-haul small-quantity shipments, rails should direct themselves to longer haul, larger quantity shipments, and water carriers should direct themselves to long-haul large-quantity shipments. Certainly no hard-and-fast rules can be adopted because of special conditions involving speed of delivery, unusual handling problems, and area of operation. Also there is a certain gray area between each general classification in which each type of carrier can compete successfully. I am confident that economists of each mode of transportation could determine these areas of operation if they work together in good faith. Certainly my company would be eager to cooperate in such an effort.

It also seems apparent to me that there should be some similarity in transportation rates on a ton-mile basis, irrespective of the geographical area of operation of the carrier. If I were a landlocked shipper, I would strenuously object to the penalties presently placed upon me by railroad transportation rates that have no water carrier influence upon them, and would dread the day I would be required to finance the destruction of the water carrier industry.

In closing, I would like to stress certain points. We are a very small company with extremely limited resources, and this situation is representative of hundreds of carriers, larger or smaller. Because there are so many carriers offering identical services on identical waterways, we effectively provide the most economical transportation available to shippers convenient to the waterways, and our transportation rates are kept in line by competition on the high side, and bankruptcy on the low side. Because our individual size is small, we would be unable to compete with the railroads in even a mild rate war. If damages to the owners and the employees of water carriers through such rate wars were to be ignored, surely the entire shipping public, which would be the loser through such destruction, should be considered. Although I recognize many inequities throughout our transportation industry to which this committee is addressing itself, the major inequities would be aggravated rather than eliminated through this proposed legislation as I understand it.

Again let me thank you for the opportunity to appear before you.

The CHAIRMAN. Thank you, Mr. Williams, for your statement.

Mr. Dingell, do you have any questions?

Mr. DINGELL. Are you principally regulated, sir, or unregulated, or part regulated and part unregulated?

Mr. WILLIAMS. We are completely unregulated. We are exempt contract carriers of bulk commodities only.

Mr. DINGELL. You indicated that you deal principally in carriage of liquid petroleum products, am I correct?

Mr. WILLIAMS. Yes, sir.

Mr. DINGELL. We have had substantial testimony today that the carriage of liquid bulk petroleum products is really not competitive between the railroads and the water carriers because of an inherent advantage for the water carrier. If that be so, it would appear that you have nothing to fear from this legislation.

Mr. WILLIAMS. As I understand the legislation this would be a deregulation of the railroads relative to all bulk commodities of which we do move certain of those commodities.

Mr. DINGELL. Such as among others you mean—you indicated——

Mr. WILLIAMS. Various petrochemicals and chemicals that we move do not constitute a major portion of our tonnage but are substantial enough that we would hate to lose them.

Mr. DINGELL. The regulation also provides protection for carriers from rate wars, provides that the antitrust laws will apply with regard to discrimination in various activities that might be conducted which would be hurtful, such as area discrimination, discrimination as to different types of carriers, different types of shippers and so forth. If you have that protection why are you fearful of rate wars with the railroads?

Mr. WILLIAMS. As I understand it, the protection that is afforded under the antitrust laws as set forth in the legislation presently would follow the act so far that we would be out of business for a considerable length of time before our case was ever tried.

Mr. DINGELL. Thank you.

Thank you Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you Mr. Chairman. I do want to compliment you for a very persuasive paper.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. No questions, sir.

The CHAIRMAN. Mr. Brotzman.

Mr. BROTZMAN. No questions.

The CHAIRMAN. Would you object to being brought under regulation as has been suggested by Captain Ingersoll?

Mr. WILLIAMS. I have some reservations about it, Mr. Chairman, yes, sir. I do not think that this is an impossible situation. I would not want to have Captain Ingersoll to determine the rules under which I would be brought under regulations.

The CHAIRMAN. I believe he did say with the exception of petroleum liquid petroleum products.

Mr. WILLIAMS. I still would want to have someone that is considerably more intelligent than I to examine the method under which we would become regulated. I do not think that the best interests of the shippers would be served by us being regulated. I think that regulation is preferable, frankly to deregulation if we have to make a choice.

The CHAIRMAN. You think you should be free to transport any prod-

uct that you desire in the business but your competitors of other modes should be regulated?

Mr. WILLIAMS. I think that so long as there is the competition by water carriers as there is today in our own business that there is no need for regulation to protect the shipping public. Possibly regulation to protect the shipping public. Possibly regulation would protect us from ourselves but we seem to have lived under that threat for years. So I do not see any useful purpose in regulation of our business.

The CHAIRMAN. Then are you saying that all of the smaller business operations then should be unregulated and all of the large businesses should be regulated?

Mr. WILLIAMS. No, sir. I do believe that so long as a carrier has competition from other carriers in identical business that regulation is not required. However, where a carrier in effect has a monopoly on certain tonnage and if it is a rather substantial tonnage it becomes even more important, that carrier should be regulated. That is the reason that I feel that the railroads should not be subject to deregulation because they do have a very substantial amount of traffic that is not subject to competition from any other carrier.

The CHAIRMAN. Well, thank you very much, Mr. Williams, for your statement here today.

Mr. WILLIAMS. Thank you.

The CHAIRMAN. Mr. Mecklin.

Mr. MECKLIN. Yes, sir.

The CHAIRMAN. How much of a statement do you have?

Mr. MECKLIN. About nine and a half minutes, Mr. Chairman. I believe I will be here tomorrow. Would you wish me to come back?

The CHAIRMAN. Yes. I had hoped that we could have made more progress and gotten to the other witnesses scheduled for today, but we just simply have not and there are several more. Obviously we would not have an opportunity to conclude with all of you so I think we might as well conclude today and recess until 10 o'clock in the morning.

(Whereupon, at 5:20 p.m., the committee was recessed, to reconvene at 10 a.m., Wednesday, May 8, 1963.)

TRANSPORTATION ACT—1963

WEDNESDAY, MAY 8, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10:10 a.m., pursuant to recess, in room 1334 Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

The first witness this morning will be Mr. F. A. Mechling.

STATEMENT OF F. A. MECHLING, VICE PRESIDENT, A. L. MECHLING BARGE LINES, INC.

Mr. MECHLING. Mr. Chairman, and members of the Committee——

The CHAIRMAN. You may identify yourself, Mr. Mechling.

Mr. MECHLING. My name is F. A. Mechling. My home and business address is Joliet, Ill.

The CHAIRMAN. Proceed.

Mr. MECHLING. I am vice president of the A. L. Mechling Barge Lines, Inc., that operate towboats and barges on the Mississippi River system, the intracoastal waterway and the Gulf of Mexico, including a portion of the Atlantic east coast waterway to Cape Canaveral, Fla. Our total operating route for our boat and barge system covers 7,000 miles of waterways both inland and on the Gulf of Mexico.

My father founded our company. I have worked for it all my life.

I am a member and officer of the Waterways Bulk Transportation Council, Inc., which speaks for a large number of shippers and barge lines engaged in exempt transportation and whose principal spokesman here is Mr. David A. Wright. I am also a member and director of American Waterways Operators, Inc., whose membership includes the regulated water carriers. However, my testimony today is on behalf of our company and as a spokesman for our company only. For 3 years I was a member of the Transportation Advisory Council of the U.S. Department of Commerce.

The advantage of low-cost inland water transportation that has been envisaged by every Congress is realized today, and chiefly in bulk-exempt transportation, as was foreseen by the authors of the exemption.

Factories, warehouses, grain elevators have been built along the water at an enormous and constructive investment cost because bulk materials can be moved by water. Economists tell us that where bulk materials can be cheaply moved, manufactured goods are more cheaply

produced and people congregate. That increases railroad business; and this committee's record already shows that the railroads which parallel our inland waterways are among the more prosperous.

The minimum rate rule that this proposed legislation would abolish, was found necessary in 1920 because railroads were stifling low-cost water transportation with rail rates that were cut without regard to rail costs.

That is the process they and the old Standard Oil Co. and others made famous in the days before the antitrust laws. Below-cost prices are a vicious, monopoly practice.

I can assure the committee on the basis of long personal experience that the railroad will use every weapon you allow them in order to destroy water transportation.

If you put into their hands the truly destructive power to attack us with rail rates that are cut regardless of rail costs long enough to destroy us, then the railroads will use that weapon. That is an attack that water carriers cannot survive. Railroads can finance below-cost rates with revenue derived from high charges on their noncompetitive traffic.

Under the fourth section, which permits railroads to get Commission approval to charge less for long hauls than for short hauls in order to meet water competition, Congress requires the reduced rail rate to be reasonably compensatory. The Commission has not construed that to mean that the reduced rate must be enough to pay the full cost of the rail service. The fourth section also says that before the reduced rail rate is raised back up, there must be some reason besides the disappearance of water competition. The fact that the railroad could use the money has always been additional reason enough.

I would suggest that our trouble is not the minimum rate rule, but that the Commission does not enforce it with sufficient rigor.

The minimum rate rule as enforced by the Commission does not require a railroad to charge its full costs when competing for waterborne traffic. Usually it requires the rail rate to return the railroad's out-of-pocket costs. That has not enabled the railroads to go low enough to kill off the water carriers, whose actual costs are so low that they can go below the reduced rail rates that do not even pretend to pay the full rail costs.

To illustrate: Low water rates often induce competing railroads to cut their rates from or to a port to a point below the full cost of the rail service. But the minimum-rate rule prevents the railroad from cutting its rates low enough actually to kill the water competition there. Then the rail shipper 20 miles away from that port wants his rail rate cut correspondingly.

The Commission allows that, and then still another shipper located yet more than 20 miles away wants his rail rate cut correspondingly. The Commission allows that and then still another shipper located more than 20 miles away wants his rate cut, too, in order to correspond, and so on the process goes.

The trouble you have then is this: When are you going to start charging rail rates that do cover the full cost of the rail service? That trouble started back when the Commission let the railroad cut its rates at the port below the full cost of the rail service.

You will cure that trouble only when you direct the Commission to require the actual high-cost carrier to charge at least his full costs, when competing with the actual low-cost carrier.

The president of the Southern Railway told you he would cut all his rates to the level of his water-competitive rates. Since then the Supreme Court has allowed him to put in force water-competitive rrates on grain, and one of the opinions mentions, for example, that the rail rate from St. Louis to Birmingham is cut as much as 40 percent. When the Southern Railway cuts all its rates by 40 percent you can well believe his solution of the problem. That solution would be Government ownership.

Of course, other solutions would be to let the railroads kill off the water carriers by rates below even out-of-pocket costs; or else subject the water carriers to a regulation which would so increase their costs that one might hope they could not survive even the below full-cost rail rates that the Commission allows them today.

Those solutions involve elimination of the water carriers. My company is directing its business policies in reliance on the statement of the chairman of this committee that it will not allow water transportation to be destroyed.

Railroads have a reservoir of revenue from vast areas where water transport is geographically impossible and bulk transport is economically impossible.

Therefore, railroads are uniquely able to use revenue from their noncompetitive rail traffic to finance below-cost rail rates in successive areas in which genuinely low-cost water transport is geographically possible and now exists.

Railroads can compete by using below-cost rail rates. Water carriers cannot compete with rates below water cost on bulk traffic because bulk traffic, where their low-cost advantage is chiefly realized, is 90 percent of all inland water traffic and 100 percent of the traffic of exempt water carriers.

Water carriers cannot compete by using below-cost water rates on bulk traffic because the limited bulk traffic available to them is what they must live on.

Anyone can see that railroads can destroy the water carriers with below-cost rail rates, as they have before. To quote the late great Joseph B. Eastman:

> The steamboats did not have this reservoir of noncompetitive traffic and so perished in the unequal struggle (194 I.C.C. Reports, 44–45).

Anyone can foresee that, as happened before, when the railroads have destroyed the water carriers with below-cost rail rates, then the rail rates with go back up again to the higher levels required to meet higher rail costs. Otherwise, the below-cost rail rates would be a permanent burden on rail transport.

Even if destruction of the national resource of low-cost water transport represented by our river systems were good for some railroads, it would not be good for the Nation. That is not the cure for what ails the railroads. The quick proof is that railroads paralleling the waterways like the Illinois Central are doing better than the others who are not so affected by water competition.

Any suggestion that railroads be allowed to destroy water transport again (as they did before) by below-cost rail rates, was bound

to fall of its own weight. The railroads alone have supported it, as a stalking horse for another rail objective; namely, unraveling the work of the Congress that exempted bulk water transport from regulation by the Transportation Act of 1940.

The railroads ask again: If it is so bad to let us compete with below-cost rates, why is it not equally bad to leave bulk water carriers free to do so?

The Congress of 1940 saw through that. Water carriers cannot compete with below-cost rates on bulk traffic without committing suicide. Railroads, on the other hand, with their vast capital and other sources of revenue (including all of the Nation's bulk traffic that cannot go by truck or water, which is far the greater part) can finance below-cost rates on bulk traffic long enough to strangle the water transportation in successive areas, until it is all gone. Economics forbid below-cost rates on bulk traffic to water carriers, but not to railroads.

The only consequence of regulating bulk water traffic would be to increase the overhead costs of bulk water transportation. Its only result would be to subject bulk water transport to what the Interstate Commerce Commission has well described as the burden of regulation, that is, to give railroads a chance to tie up their every move in a railroad-financed fight before the Commission, to compel a formally demonstrated justification in successive hearings and appeals, of anything whatever—however clearly justified it might have been from the beginning. The resulting burden on overhead costs is enormous.

The resultant effect would be greatly to increase the cost of bulk water transport and force an increase in bulk water rates, susbtantially reducing the advantage that the shipping public realizes today from low cost water transportation.

To quote a member of the House committee reporting on the Transportation Act of 1940:

> Why were bulk carriers by water exempted? They were exempted because every one recognizes that their carriage is so cheap that they are not in competition with any carrier (Congressional Record, 70th Cong., 1st session, p. 9709; Congressman Halleck).

The vast majority of water carriers are small economic entities engaged solely in bulk transport. Some of the relatively few regulated carriers, who correctly foresee that few if any of the exempt carriers could survive the burdens of regulation, are tempted to see in that a reduction in the number of their water competitors for bulk water traffic. You have heard from some of them.

I am an officer of a regulated carrier and consider that view shortsighted. It fails to take account of what the railroads would be doing to divert the exempt bulk traffic that even the regulated carriers must live on. However that may be, it is a view inconsisent with the national interest, which is that bulk traffic shall move by water for as low a rate as will defray its costs.

The regulation of exempt bulk water traffic would gratuitously increase its costs to the detriment of the shipping public.

Low water rates are the product of low water costs—less materials consumed and man-hours expended to move a ton of freight a mile, when it can go by water. That is an economic resource that only folly or selfish interest would destroy or diminish at a time when the Nation is in competition with a foreign power.

Mr. Chairman, gentlemen, for these reasons I oppose the passage of H.R. 4700 and the deregulation of minimum rates on the railroads.

The CHAIRMAN. Thank you, Mr. Mechling, for your statement.

Are you controlled by the Interstate Commerce Commission?

Mr. MECHLING. Yes, sir, we are. We have extensive operating authority from the Interstate Commerce Commission that extends from Milwaukee, Wis., on Lake Michigan to Brownsville, Tex., on the western coast, down the intracoastal waterway, to Minneapolis and down to Tampa, Fla., and around to Cape Canaveral on the east coast of Florida.

The CHAIRMAN. Then all of your barge operation is regulated?

Mr. MECHLING. About 50 percent of our traffic moves exempt and 50 percent of our traffic moves under regulation of the Interstate Commerce Commission.

The CHAIRMAN. Do you agree with Captain Ingersoll that it would be advisable to bring all operations under regulation? By this, requiring the filing of tariffs, and so forth?

Mr. MECHLING. I do not agree with Captain Ingersoll in that respect, Mr. Chairman. Here again I feel that any extension of the cost of doing business to the bulk exempt water carriers, for example, would be an increase in cost burden, but would have to be passed on to the shipping public. I think this would be contrary to the national interest and there is much——

The CHAIRMAN. Would you say it would be contrary to the national interest, then, Mr. Mechling, for you as a barge operator to continue to operate free of regulation, to be free to make any contracts you want to, pay any rebate that you might desire, to charge any rate that you would want without anyone knowing what the rate is, and at the same time your competitor be regulated on bulk commodities through the same area that you operate, must file tariffs with the Commission and substantiate the rate as being a reasonable charge? Do you think that is the situation that should continue and it would be in the public interest?

Mr. MECHLING. That situation as it has been for the past 23 years under the Transportation Act of 1940 has seen and demonstrated the greatest growth in traffic on inland waterways today under this structure. This has been, I think, in the public interest. I think the economic growth, the industrial growth, has come about because of the possibility of anyone that wishes to go out with an industry and make a contract or a rate to provide a particular service in a particular field. This is special service, mind you.

In most areas, in a special field, to provide low-cost service for that industry. And through the ability to do that, the waterways have grown, the exempt carriers have grown, the common carriers have grown, and every carrier had the opportunity to operate and to conduct his business under those very ground rules, and do.

We do, as I mentioned, have—half of our traffic is regulated, half of it is exempt. Some of it is under contract. Most of it is not. We operate just an exempt carrier without any contracts and everyone in our industry on a comparable basis has grown and flourished under this system that Congress established in 1940.

Mr. SPRINGER. Would the chairman yield?

The CHAIRMAN. Yes, I will be glad to.

Mr. SPRINGER. One question: Have the railroads grown under that system?

Mr. MECHLING. Their traffic has grown with the economy; yes.

Mr. SPRINGER. Has their system grown?

Mr. MECHLING. Has their system grown? Well, sir, I don't know of any new railroads that have been built as far as railroads are concerned or trackage has been built in my lifetime.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Well, then, you do not think that there is anything to these reports about the inroads of the common carrier system, yours and all the rest of them, of private carriage and the gray operation and the things that are taking $12, $15 million a year away from common carriers?

Mr. MECHLING. You say I don't thing there is anything to this—to the inroads?

The CHAIRMAN. Apparently you do not.

Mr. MECHLING. Well, my feeling is, and being in the business and dealing with this every day, that anything that creates a restriction in this freedom to compete, the freedom to operate as expressed by Captain Ingersoll yesterday, that he wanted the freedom to enter the field of water transportation, the freedom of entry open, anything that creates an obstacle in that direction in my opinion will force more private carriage and take away the opportunity for common carriers to engage in that traffic or to provide a service for that type of traffic that will prohibit or limit our ability to serve, and I am keenly concerned about this as a common carrier.

I want the opportunity to provide a flexible service, to in every way do what I can to haul or transport as cheaply as I can so that we will minimize the desire of private carriers or private industry going into private carriage.

If we don't have a free flexible river system that permits this, then we run into the problem of encouraging private carriage.

The CHAIRMAN. I am all for protecting the water carriers and I think that I would probably speak the sentiments of every man on this committee. All of these fears that have been expressed by you and others that we are going to permit the railroads or anybody else to put those water carriers out of business seem to me are not a proper concern and fear.

Now, I think I can certainly speak for my own self when I tell you that we have no intention of letting anybody put anybody else out of business.

I must also express my interest, and it is a very great interest, in the position taken by a substantial operator when he says, I want to be free myself to do what I want to do even to the extent of offering rebates or anything else. I want to continue to grow, which is admirable, but by the same token I want you to make my competitors toe the mark and put it out on the table in the open where everybody else can see what is going on.

That is the one thing that has been uppermost in these hearings thus far that has been presented that I cannot understand.

Mr. MECHLING. I appreciate the chairman's concern. I appreciate his interest in seeing the water carrier industry stay in business. This is our life and I appreciate the committee's concern in this respect.

But there is a difference. When you say regulation or nonregulation or we are permitted to do something that other carriers are not permitted to do, every carrier in our field is permitted to do exactly the same thing under the same laws if they choose to operate in that manner, and they do. Insofar as the secrecy is concerned, the water carrier industry is a pretty open fraternity and there are very very few secrets as to rates, as to services, as to what goes on as far as those people in the business, the shipping public.

The CHAIRMAN. Where do you file them and make them public, then?

Mr. MECHLING. Pardon?

The CHAIRMAN. Where do you file them and make them public?

Mr. MECHLING. Every rate is known, whether it be on file or not. When the railroad desires to meet a water competitive rate they may not be published, it doesn't take the railroad more than 5 minutes to find out what that rate is.

This is obtainable in order to justify a railroad rate. It is obtainable from the shipper. The shipper will supply the rate so that it immediately becomes public knowledge of what these exempt rates might be.

This is true of grain, it is true of coal, it is true of phosphates, it is true of anything that moves bulk in the river. Any time a railroad wishes to know, if he is going out to get traffic, even if they want to get the traffic at below their cost, in order to know what the target they are shooting at, they can obtain this information. There are no secrets there.

And furthermore, the question was raised yesterday about whether or not the carriers that are not under regulation and that are not under the exemption of the Bulwinkle Act, whether or not they come under the antitrust laws. We do. We operate and consider that we operate in full view of the antitrust laws as they apply to services.

So we feel that we are under supervision of someone, that anyone who wishes to can supervise or take a look at what is going on in our industry. So we are not dealing in secrecy or in a dark closet really. We are out there, we are an industry that is out there in public view and it is well known what its activities are.

The CHAIRMAN. The fact remains that you are completely free to do what you want to, or make any contracts you want to as a matter of policy, isn't that right?

Mr. MECHLING. Yes, sir; as a matter of policy.

The CHAIRMAN. I appreciate, of course, the sincerity of all you people in the various modes. Our great problem here is we have got a keen, highly competitive situation which we are faced with and we are called upon to try to resolve.

Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Mechling, have you ever had a shipper come to you and say that the rails had offered a certain rate in order to beat your rate down or that you should lower your rate because of a rate offered by a rail?

Mr. MECHLING. Yes; this happens.

Mr. YOUNGER. Can you give us a specific example?

Mr. MECHLING. We have had it happen in grain traffic. I am trying to just recall some specific examples. We had it—we have had this occur in transportation of fertilizer to a certain point, from Florida into a designation in the Midwest, into the farming community of the Midwest.

Mr. YOUNGER. Did the railroad offer a rate which was below their published rate?

Mr. MECHLING. Well, they filed reduced rate that was substantially under their published rate; yes, sir.

Mr. YOUNGER. Just for that purpose?

Mr. MECHLING. Just for the purpose of diverting the traffic back which had started to move by water. Just a few bargeloads had started to move by water and they reduced the rate substantially in order to keep it on the rails or get back what was moving by water diverted back to the rail service.

Mr. YOUNGER. And the Interstate Commerce Commission approved that rate?

Mr. MECHLING. Yes, sir; they sure did. And we are in litigation in many of these cases.

Mr. YOUNGER. Well, then, the question which I can't understand is your accusation, that Interstate Commerce Commission is not carrying out their obligation in the public interest and if they approve all these rates and if they do approve all these rates, then why object to the elimination of the minimum rates because from what you say, the railroads can do anything they want to now in regard to rates and the ICC approves it.

Mr. MECHLING. Well, ever since—just in a recent few years, and I might give you an example of a situation we found ourselves in in 1956 and 1957, and this was about the time that discussions were starting, and finally the 1958 act was passed with the revision in the ratemaking provisions of the act. We have a grain haul of 100 miles long on the Illinois waterway which accumulates grain at riverside, river bank elevators, and transports it to Chicago.

Paralleling the Illinois waterway for a short distance is a branch line of the New York Central Railroad. The barge rate historically had been over a period since about 1938 or 1939, about those years, at about the 5 cents a hundredweight level, about a dollar a ton. The corresponding rail rate for service for similar length of haul on that branch line was about 23 cents a hundredweight, 23½ cents a hundredweight compared to our 5 cents a hundredweight rate.

In 1956, many years later, the railroads came along and filed a reduced rate to meet the barge rate and they picked the rate of 5½ cents a hundredweight that was also the barge rate at that moment and put this rate into tariff form and filed it. The rate went through. After much litigation and public hearings, the Commission finally approved it.

This rate through testimony, through facts developed on the record, indicated that the rail cost is about 13½ cents a hundredweight to move this. Nevertheless, that was approved. We have them in the courts now. We have a hearing scheduled for the Supreme Court; we hope this fall trying to seek redress and have the Commission follow the letter of the law.

We have to do this. If there is no restraining hand on them—to answer your question—if there is no restraining hand on them at all, there will just be a wholesale reduction of rates all over the country, pinpointed to eliminate water competition to all these key points. And it is very easy to do.

We have been victims of this in many directions. This is one of the outstanding examples I am personally familiar with because I testified in the hearings.

Our company was a victim of a loss of 200,000 tons of grain per year at a dollar a ton, and that is $200,000. I am not complaining about that at this point except to point up what does happen if we had no restraining factor influencing or controlling the minimum rates of the railroads.

There would be a wholesale reduction.

Mr. YOUNGER. Have you ever had any case where the large water carrier put in rates to eliminate a smaller water carrier?

Mr. MECHLING. There is freedom——

Mr. YOUNGER. Competition?

Mr. MECHLING. There is freedom to compete in our industry, sir, and I think we have about 1,700 carriers in the system free to compete. Everyone has a different set of circumstances and quotes a rate based on pretty much his individual operation. So we have a pretty freelance competitive activity within the water carrier industry.

However, the finances of all are limited. Their capital resources are limited. Their ability to expand is limited, controlled by their financial resources, so there isn't the giant-killer type of tactics so much there as you would think.

There is pretty keen competition going on. It is keen. It is effective because I think it gives the public the lowest rate consistent with the carrier remaining prosperous in business. This is accomplished.

As Captain Ingersoll testified yesterday, one of the large commodities on the river, a big volume commodity movement, is grain and everyone charges the same rates on grain, for example.

Mr. YOUNGER. But you do have the competition in the larger companies knocking out their competitors with a lower rate which they can afford to take.

Mr. MECHLING. The opportunity——

Mr. YOUNGER. Isn't that true?

Mr. MECHLING. It doesn't happen. I haven't heard of any death in the family in a long time of any carriers. There has been growth. There have been new carriers added, new carriers coming into the field, but there has been no deaths by this destructive weapon you speak of.

Mr. YOUNGER. Have there been any deaths as a result of these unfair rail rates which the ICC approved?

Mr. MECHLING. I am trying to think. Some—there is change of service. We are no longer providing the service to Chicago. Fortunately we had other traffic going to other directions, to New Orleans and Florida and Texas, that we were able to keep our equipment busy. That equipment that was engaged in that service. And if we had no place else to go, that would have been a death business; yes, sir.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. I was wondering on your rate system, for example, if you started out from Minneapolis under a published regulated rate and you go on down the river and come back on a return haul and you might find it necessary to offer a bargain rate, even a below-cost rate in order to get a return haul.

On the return haul are there ever instances where on your return trip your charge is lower than on your trip downriver, for example? Do you sometimes give a bargain rate in order to fill your barge?

Mr. MECHLING. This is very often done. This is what people do to balance movements so that the total revenue provides a total operation, an operation in total, in the whole round trip total.

This is very often done. I think you will find rates even on file wherein the southbound rate, say, from Minneapolis to the gulf will be higher than the rates another bulk commodity moving from the gulf back into Minneapolis.

Mr. NELSEN. Now, on your water transportation, in your judgment can a railroad furnish the competitive rate as to cost? I gather from the testimony that to transport by barge would be much cheaper than to transport by rail and if the railroads—if the demand was made that their rates be compensatory, their rates would always be higher than yours, would they not?

Mr. MECHLING. In those instances where it is a parallel water route, yes. Now, circuitry, we can get a circuitous point where we might be moving 1,500 miles by water, for example, and the rail route is only a 300-mile route. Then, of course, you would be priced out of that market. But where you have a reasonable paralleling route, the water carriers on bargeload quantities can assert——

Mr. NELSEN. Now, wouldn't it also be true, going back to my first question, where you take a return haul at a bargain rate, and that would be to improve, as we say in the power business, your load factor, now, wouldn't it also be true that a railroad in some cases rather than go empty could afford to give a below, an across-the-board compensatory rate in order to improve their load factor to make them more competitive?

Isn't it true they might be in the same position you are in?

Mr. MECHLING. Absolutely. They would maximize their profits by utilizing equipment both ways.

Mr. NELSEN. But they wouldn't be permitted to do it, however, if they were completely regulated and had to publish a rate that was compensatory, would they? They wouldn't be competitive with you, would they?

Mr. MECHLING. As long as the rates were fully compensatory. If they can haul it and make a profit at lower cost than the water carrier, the water carrier is not entitled to the business. The water carrier's only advantage in service is the lower cost, and if we can do it more cheaply, then we should have the right to haul the traffic and the railroad should not have the right to assert its financial strength from other sources to so reduce its rates that it can move the traffic at below cost rates. That is all we are saying.

Mr. NELSEN. My point is on your return haul that I referred to, because of the fact that you might have been moving with an empty barge, you were able to give a very favorable rate in order to improve your total takeup for your trip.

Now, the same thing could be true in rail transportation where there would be instances where a bargain rate might be a profitable rate because of improving the load factor of the railroad itself. I think you understand the point. But if it is completely regulated, there is a problem, I would think, for the rails in this case to meet the competition that you are able to offer and that is the problem we face here. We are trying to find an answer.

I have no further questions.

Mr. MECHLNG. I would like to just comment further on that. The railroads do to this, as a matter of fact. And the example as contained in Mr. Hershey's testimony, I believe, wherein the railroads reduced the coal rate from the Tennessee or Kentucky fields substantially to Florida because they had a northbound haul of phosphate rock and were able to use those same cars to make the haul back. In the same equipment. They maximize the movement. They do the same thing we do, under regulation, supervised, approved if they can justify the case.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. No questions.

The CHAIRMAN. Mr. Hemphill?

Mr. HEMPHILL. Thank you, Mr. Chairman.

I received a letter yesterday which poses a question in connection with this legislation because it has me considerably concerned.

As I understand it now, if you wish to prefer one customer over another in quotation of rates for an exempt commodity, you can do so, can you not?

Mr. MECHLING. Yes, sir, that is correct. That is entirely possible, and it is often done. There are many carriers that are almost captive to one or two customers, that they just specialize in dealing with.

Mr. HEMPHILL. I just received a letter, not from my district, about a railroad which is preferring one man over another and this fellow has written me that this rate would financially ruin his business—

because we could not avail ourselves to it at either of our three plants. We have our plants set up for all-truck delivery.

And he says that the trucks can't meet the rates so that the man that is on the railroad is getting a price that is enabling him to take all the business of the man that isn't on the railroad.

Does that happen in the water bargeline business, too?

Mr. MECHLING. Yes. You will have plants geographically located to a water facility and another plant not located on water which has the expense of getting from the waterside to his plant and here you have a case where you have rail service on the one hand and only truck on the other which may limit the ability of the trucker to compete with the rail service which may be the lower cost service. And this happens all the time in the river industry.

Mr. HEMPHILL. It goes back to the question I have asked three or four witnesses here, whether or not we consider the business community as represented by the shippers and the users of various means of transportation. You can discriminate—I don't like the term but it is getting to be rather common vernacular here—you can discriminate and it is within your power to make or break any industry on your bargeline, on the water rate, to a certain extent.

Mr. MECHLING. We cannot do that. We cannot discriminate in that sense because I mentioned earlier that there are 1,700 people willing to set up and serve a customer. So that customer is going to get the service in a competitive market the way it stands today. He can go out, if our line could not supply him, X, Y, or Z line could provide him with a rate that would be equally competitive or maybe even lower, more competitive or lower priced rate than our rate. So there is keen competition to permit that shipper or make it impossible for that shipper to be really discriminated against.

Mr. HEMPHILL. In other words, on your franchise from Lake Michigan to Brownsville, I believe you said, there are 1,700 other people in competition.

Mr. MECHLING. In regulated carriers, six in existence. In the exempt bulk field of transportation, about 1,700 carriers in the business. They can go anywhere on the river system.

Mr. HEMPHILL. Suppose you didn't have but one bargeline, say, say one railroad or one truckline. If you can give customers preference because you get a volume of business, or something like that, you can really give the preferred customers' competition a fit, can't you?

Mr. MECHLING. Yes, and this can happen under regulation, too, when your——

Mr. HEMPHILL. I am talking about under regulation. That is what is bothering me.

Mr. MECHLING. If you had complete regulation and you only had a going amount of equipment available to serve a customer, then the power of the customer to command that business or tie up all the facilities of this one carrier would not leave any facilities available for another shipper. He would be out of business then if you didn't have available to him as many people as possible to serve that, all the shippers.

So that there is really no monopoly. There is really no monopoly under the present structure except in the regulated field that you mentioned.

Mr. HEMPHILL. Well, I don't know this fellow. I intend to phone him after these hearings this morning. But——

Mr. MECHLING. He doesn't have a railroad to his plant?

Mr. HEMPHILL. He doesn't have a railroad to his plant and he says in effect if we pass this legislation it is going to put him out of business.

Mr. MECHLING. Is he anywhere near the river? Maybe we can help him.

Mr. HEMPHILL. No, sir. We haven't got that sort of rivers in that part of South Carolina, I am sorry to say. That is in Greenville, S.C.; it does pose a problem.

Now, how would you feel if you were entirely regulated, that is, that all your exemptions were taken away and that the Interstate Commerc Commission set maximum and minimum rates on all commodities that you haul?

Mr. MECHLING. How would you feel?

Mr. HEMPHILL. Yes.

Mr. MECHLING. Well, as a company that has been in business over 40 years and grown under the freedom of competing, we wouldn't feel very good about it. We wouldn't feel that we would be able to

provide the best service for every shipper or any shipper. We would lose the freedom to supply a service at a lower cost. It would increase our cost of doing business.

Mr. HEMPHILL. It seems to me here that certain types of transportation have a freedom that other types of transportation do not.

Mr. MECHLING. There is a difference between the two.

Mr. HEMPHILL. Well, that is true, but they are all in the same business of transportation.

Mr. MECHLING. But in a different fashion. Water transportation cannot be completely compared to rail transportation. We don't move as fast. We don't carry everything. We don't have the flexibility of service, the speed of service, the low quantities of shipment. We have all the disadvantages in the limitations of the rivers, but the river is where they go, where they provide a low-cost service to everyone that can use them. They are not limited and not restricted to those that are just in business under regulation.

It is freedom for everyone to compete, to serve the public.

Mr. HEMPHILL. Now, in the trucking fields, as I understand it, there is a whole lot of freedom to compete, is there not, because you have got so many unregulated trucking lines but they don't compete with you, do they, the unregulated truck?

Mr. MECHLING. No, sir. We deal—here again there is a difference in the service. We have shipments of 1,200 tons to the bargeload and they are carrying 20 tons to the truckload.

Mr. HEMPHILL. And the regulated truckers really don't give you much competition, do they?

Mr. MECHLING. No, sir.

Mr. HEMPHILL. I had some letters last year from oil jobbers. Do you haul a good bit of oil?

Mr. MECHLING. We do. We handle quite a quantity of petroleum products.

Mr. HEMPHILL. In your opinion would the passage of this legislation have any impact on the price of oil to the man who is buying it on Smith Street in Podunk, Ill.?

Mr. MECHLING. I would think so. I am certainly not completely qualified to answer on the pricing structure of the oil industry.

Mr. HEMPHILL. Assuming now for the benefit of a public which has been neglected in the testimony I have heard, what impact is this going to have on the man who is a consumer at a domestic level, on food, oil, coal, things that we use every day in our homes?

Mr. MECHLING. May I answer it this way. Through the years we have increased the carrying capacity on the rivers at lower cost. This is the only reason the tonnage moves. It is the only reason it develops. This is true of petroleum products that you mentioned. If through this legislation you reduce or eliminate, say, the water transportation which has been the floor that the rail rates have been tied to, both for petroleum, for grain, for fertilizers, for your flour even that goes into bread—it gets down to this point—if you eliminate this floor that it is tied to, the ultimate result will be increasing the cost to the consumer.

We think this is an economic factor of our life and we think it is important that we be able to assert our lowest cost in order to maintain that economic value to the consumer.

Mr. HEMPHILL. Let's get down to the core of the thing. What business would the railroads take away from the bargelines that you would anticipate they would take away if this legislation were passed?

Mr. MECHLING. They would take away grain, coal; petroleum would probably disappear under this type of thing. As a matter of fact, yesterday the southern grain rates were mentioned. There is also riding in the southern territory a reduced rate on asphalt going into the Tennessee River which would permit the big jumbo tank cars to take the traffic away from the bargelines for awhile or permanently.

This would eliminate barge transportation of asphalt going down for roadmaking and with the elimination of the water carriers and rates going up, this will increase the roadbuilding cost. It goes all throughout the economy. We would lose grain specifically. We would lose grains, phosphates, chemicals. We would lose—well, not iron and steel. That is a regulated one. Coal. All these commodities would be affected and this represents more than 70 or 80 percent of the traffic moving on the waterways.

Mr. HEMPHILL. I would assume as you come back from Texas or Louisiana you pick up oil for the up-river ports. Is that true?

Mr. MECHLING. Yes. Oil moves out of the gulf coast into the Midwest all the time. That is a substantial movement.

Mr. HEMPHILL. It also moves to the east coast as I understand it?

Mr. MECHLING. Yes, sir. Right. By tanker or pipeline.

Mr. HEMPHILL. What is the general capacity of an oil-carrying barge or facility of the bargelines?

Mr. MECHLING. Well, the tows today carry 60,000 to 100,000 barrels.

Mr. HEMPHILL. How many railroad cars would that take? Do you have any idea? If you don't know, say so.

Mr. MECHLING. You would have to mathematically work it out. What is the standard—the standard tank car is 10,000 gallons.

Mr. HEMPHILL. Do you think the railroads could afford to quote a price that will go below your price?

Mr. MECHLING. All I can say is they have.

Mr. HEMPHILL. They have?

Mr. MECHLING. They have done so. They have tried to do so but the only thing that has stopped them from doing it is a restraining hand of the minimum rate control of the ICC. This is what has restrained the rates from going into Chattanooga, Tenn., from Wood River, Ill., which is a water movement today, from Wood River down to Chattanooga, down the Mississippi River and up the Tennessee River, and those rates are stayed today pending a Commission decision. Otherwise this traffic would be diverted to rail.

Mr. HEMPHILL. Well, now, are those rates so far as you can calculate below cost rates?

Mr. MECHLING. Yes, sir. As far as the experts have been able to tell us, the cost experts that have studied these rates.

Mr. HEMPHILL. I have my own ideas about why people quote below-cost rates, but I would like to hear yours.

Mr. MECHLING. Well, one of the reasons anyone will do it would be to get traffic.

Mr. HEMPHILL. Get the business?

Mr. MECHLING. No one gives up money in business and hopes to survive in a profit, free enterprise system if they can help it. They do it to get business.

Mr. HEMPHILL. Well, don't you feel that if we passed this legislation and its impact was to cause the demise of your transportation, your side of the transportation industry, bargelines, don't you think the Congress would do something about it?

Mr. MECHLING. Sir, we hope so. We have been in business because Congress did something about it in 1920. We have been able to grow and prosper and provide a service because Congress did something about it in 1920.

We would not want to roll history back and lose what we have gained, what we feel we have produced in the economy of this country.

We feel we have done a good job. If we have not, then Congress will have to tell us in their opinion after they study this question. We think we have done a real good job for the economy.

We have helped the growth of the country, helped the transportation service which has permitted decentralization of industry since World War II which is fantastic. Maybe we are self-inflated egotists, I don't know, but we feel we have done a real good job and we would like to continue to do so, would like the opportunity to continue to do what we feel has been a good job, and we feel that Congress intended that we should do when the 1940 act was passed and the 1920 act was passed.

Mr. HEMPHILL. I certainly wouldn't criticize you for tooting your own horn.

Mr. SPRINGER. Would the gentleman yield for one question?

Mr. HEMPHILL. Certainly.

Mr. SPRINGER. You mentioned the movement from Wood River to Chattanooga. Even if this bill were to be passed, you still would have the same protection you do now in the Wood River and Chattanooga passage. The railroads cannot transport below cost even under this bill.

Mr. MECHLING. We don't so understand it. There is no control over what the railroads must charge.

Mr. SPRINGER. Yes, there is. It is my understanding that under this legislation, Mr. Chairman—am I right on this—they are not allowed to charge rates below cost of the transportation?

The CHAIRMAN. Well, that is the big argument. It isn't——

Mr. SPRINGER. It isn't clear?

The CHAIRMAN. It isn't easy to answer.

Mr. MECHLING. This is our problem, Mr. Springer, and this is what concerns us, that the guidelines, the ground rules and guidelines for pricing service are not very well established today. That is why we have 11 years of litigation going on.

Mr. SPRINGER. I thank you for getting this information because I didn't understand it that way.

The CHAIRMAN. I don't know that the gentleman's anwer is something I would agree with altogether. I think it is pretty clear what it is intended to do. But if Mr. Childs was correct when he presented to us last year in the hearings—he outlined several pages of items in which he showed what the ratio to out-of-pocket cost was.

The ICC is directed to approve rates—what is the phrase—reasonable—just and reasonable rates. Now, one of the elements in a just and reasonable rate is whether that particular commodity moves. Isn't that right?

Mr. MECHLING. That is right. A lot of commodities have started to move today because water transportation could provide a just and reasonable rate that permitted it to move into the marketplace.

The CHAIRMAN. Well, just and reasonable so far as your own freedom to operate is concerned.

Mr. MECHLING. Well, here again the water carrier has to carry things at a profit. He has no other traffic or resources to gain income from other than his water carrier service and he must operate at a profit.

The CHAIRMAN. I know. That is getting right back into the competitive end of it. We are talking about the principle of moving and just and reasonable.

Now, Mr. Springer—and it is quite obvious that certain commodities move at one particular figure on the ratio to out-of-pocket costs and another commodity moves at a different figure. That is true, isn't it?

Mr. MECHLING. Very definitely. Where there is competition or noncompetition makes a difference.

The CHAIRMAN. And it has got to be that way and the common carrier principle, isn't that right?

Mr. MECHLING. If you want to maintain a healthy transportation system.

The CHAIRMAN. And that is what you want to do, don't you?

Mr. MECHLING. We are certainly here to preserve and protect it, too.

The CHAIRMAN. Is that all, Mr. Hemphill?

Mr. HEMPHILL. I wanted to get back—thank you so much. As I understand the opponents of this legislation from the testimony I have heard, their fear is that if this legislation passes, the railroads are going to put everybody else out of business and then raise the rates to get back what they lost. Is that about the size of it?

Mr. MECHLING. That is about the size of it. If history repeats itself that is the size of it. It usually does.

Mr. HEMPHILL. I was right suspect of that theory until I got this letter this morning and here is a businessman just catching the devil. Everybody else is making money. I don't know wherein our responsibility lies but if the small businessman of this country is to be affected by this legislation, I want to know where and whey if you can tell me.

Mr. MECHLING. Well, I am sure that the discrimination that would arise if this legislation were passed will further discriminate against that small businesman. He will have no place to turn.

He may not even have a river to go to if he wants to move his plant near a river to get service. He would really be discriminated against. He would really have problems if the discrimination you could build into this thing as we see it today and as actually happening—this fellow would have more difficulty. We feel that the small shipper needs some protection from this discrimination. Our interest lies with the shipper. Without the shipper we have no reason for our existence. We have no business because the shippers want us for busines. We provide a service for them. And we just are as concerned about that small shipper as you are.

Mr. YOUNGER. Will the gentleman yield on that point?

Mr. HEMPHILL. Yes. I am happy to yield to my distinguished friend.

Mr. YOUNGER. If that is true, why have all the shippers come in here and testified in favor of the bill?

Mr. MECHLING. Why are they not?

Mr. YOUNGER. I say why have they? If you say the interest of the shippers lies not in this bill, why have the shippers all been in here testifying in favor of the bill?

Mr. MECHLING. I don't know. There are some that may feel that they are going to get lower freight rates but the shippers that are knowledgeable about water transportation I think may have a different point of view. I think you might well find that there will be some shippers that may have a different point of view if they found themselves with only one mode of transportation serving them over which they found they had no control.

Mr. YOUNGER. That is quite an accusation against the men that have been in here who are as you say knowledgeable about transportation when they are the transportation officers of some of the big corporations, and then you say they are not knowledgeable.

Mr. MECHLING. These are the shippers, I am sure Mr. Younger, that very few of actually use water transportation as a service and we have talked to some of these people and they couldn't care less whether the water carriers stay in business or not. They don't move anything by water. The shippers that we talk to that say they do say they would hate to see us disposed of in this scheme of transportation, but the people that have taken this position, and, of course, the majority of the shippers of this Nation are the smaller shippers that ship goods, the manufactured goods, the band aids and the television sets, that don't use water transportation. Their commodities do not lend themselves to it.

Mr. YOUNGER. That is all I have.

Mr. HEMPHILL. Do you yield back to me? Thank you so much.

Well, I am concerned also because I have had the unhappy experience—I am old enough to have seen the situation in which to ship a commodity from South Carolina to New York cost more than to ship it from New York to South Carolina.

I don't want something like that to happen again.

Now, of course, if we had had a lot of water transportation, maybe we could have prevented that.

Mr. MECHLING. And, of course, the administration of the law as Congress has passed it, so we say if there is discrimination, there should be a complaint and the discrimination corrected. This is what the law was for.

Mr. HEMPHILL. We had a Loan Guarantee Act up here to loan the New Haven money on collateral that nobody would take and we had that—the regulations Congress set down were just blatantly ignored by the ICC, and I am just wondering whether or not that danger exists here, where it can shut its eyes when it wants to, the Interstate Commerce Commission.

Of course, I don't reckon you can afford to say.

Mr. MECHLING. Well, we have our problems. I don't know what the answer is. We certainly think the law ought to be applied as Congress intended it to be applied.

Mr. HEMPHILL. I want to thank you for your patience with my questions.

Mr. MECHLING. Thank you.

Mr. HEMPHILL. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Cunningham?

Mr. CUNNINGHAM. I have just one short question.

What percent of the total movement of all cargo do the water carriers handle, approximately?

Mr. MECHLING. What percentage of the Nation's——

Mr. CUNNINGHAM. How big are you in comparison with the total transportation?

Mr. MECHLING. You mean in the whole country? The water carriers transport somewhere between 8 or 9 percent of the Nation's cargo. I am sure it is in the record; 8 or 9 percent.

The CHAIRMAN. Thank you very much, Mr. Mechling, for your presentation.

Mr. MECHLING. Thank you.

The CHAIRMAN. Mr. David A. Wright.

STATEMENT OF DAVID A. WRIGHT, WATERWAYS BULK TRANSPORTATION COUNCIL, INC.

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. You may identify yourself for the record, Mr. Wright, and proceed.

Mr. WRIGHT. My name is David A. Wright. I am appearing today on behalf of the Waterways Bulk Transportation Council, Inc.

The council is a nonprofit organization of shippers, carriers, and others interested in the maintenance of the exemptions in section 303 of the Interstate Commerce Act and in the development of bulk transportation on the inlnad waterways of this country. Forty-five percent of the members are shippers. They use all modes of transportation.

The basic philosophy of our organization is that there should be no unnecessary restriction on freedom of competition. In the case of the transportation of bulk commodities by water, we believe that such freedom has served and is serving the public interest well.

We favor extending this freedom of competition as far as possible without opening up opportunities for destructive or unfair competition. That is why we support the expansions of the water carrier bulk commodity exemption as provided in section 2 of the bill.

And we would support proposals which would enable other modes of transportation to engage in what we would call honest rate competition. If in honest competition, the rails can take traffic away from the water carriers, they are entitled to do it.

Because of this basic philosophy, our organization has this year carefully reexamined the provisions of section 1 of the bill to see if they would assure that railroad rate competition with the bargelines would be honest and that the water carrier industry would be protected against destructive and unfair competition.

We believe that if these questions cannot be answered affirmatively, the proposal is not in the public interest. We think that the availability of water transportation, at least where it is the truly low-cost mode of transportation, is of great importance to shippers, the public, and the Nation.

What safeguards against destructive competition by the railroads would be left by the bill in the absence of the Commission's minimum rate power, and how effective would they be? The bill makes reference to a number of statutory provisions that would restrain the railroads in connection with their rates on the exempted commodities:

1. Section 2 of the Interstate Commerce Act, making unlawful any unjust discrimination in rates between shippers.

2. Section 3(1) of the act, making unlawful any undue or unreasonable preference or advantage in rates.

3. Section 1 of the Sherman Act, making illegal contracts and combinations in restraint of trade.

4. Section 2 of the Sherman Act, making it criminal to monopolize, or to attempt to monopolize, or to combine or conspire or monopolize any part of interstate commerce.

Our considered opinion, after reviewing these restraints and the history of their application, is that these are completely inadequate to prevent the destruction of the water carrier industry by the railroads through competition which we would not consider honest.

Before analyzing each of these statutory provisions, let me review the background against which the legislation would operate.

No legislation can possibly equalize the value of service or the competitive strength of water and rail carriers. Water service is, in several respects, inherently inferior. It is slower. It is generally available only to minimum loads of much larger size than railroad minimum loads.

It is confined to the banks of the waterways, whereas the railroads reach all parts of the country. Combining water transportation with rail or truck to reach points off the waterways involves an added expense, the cost of transshipment.

Because of these disabilities, the water carriers could not possibly exist in competition with the railroads, except for one advantage they do have: the advantage of much lower fully distributed cost.

Where the advantages of rail service that I have mentioned are not so important to a shipper as low cost of transportation, the water carriers have an essential role to play. If the railroads made rates based upon the true cost of providing their service, there is no doubt that the water carriers would be able to survive and to continue to perform the role of providing low cost transportation.

Unfortunately, when the railroads find themselves in competition with the lower cost bargelines, they are willing largely to ignore factors of cost in their efforts to kill off the water carriers, except as they may in some way be restrained by the Interstate Commerce Commission or other agency.

The ICC figures for the year 1960, the last year for which figures are available, show that 72.5 percent of the total freight tonnage and over 65 percent of the total ton-mileage of class 1 railroads were handled at less than fully distributed cost. The same figures indicate

that over 22 percent of the tonnage and nearly 16 percent of the ton-mileage were delivered at less than out-of-pocket cost.

The railroads can afford to cut rates to kill competition, with little or no regard for costs, because of five characteristics in which they differ from the bargelines:

1. The railroads have a huge amount of traffic, in the same commodities as those carried by the water carriers, that is not subject to water carrier competition. On such landlocked traffic they can, subject to such restraints as may be placed on them by the competition of other railroads and of trucks (which are usually higher cost carriers, however) and by the Commission, raise rates so as to recoup the losses incurred by rate-cutting on water-competitive routes.

2. Railroads also carry many commodities on water-competitive routes which, because of service requirements, are not adapted to water carriage. These consist largely of processed products of high value per pound falling in the manufactures and miscellaneous category. These, too, can be subjected to high rates to finance water-competitive losses.

The railroads operate a form of internal subsidy system. The heavy losses of their water-competitive traffic are more than recovered by the large profits on other movements. Thus, the shippers of commodities not adaptable to water movement are privately taxed to provide below-cost service where water competition is present.

As Profs. John R. Meyer and Merton J. Peck have said:

> The result of this process has been aptly named the value-of-service method of rate determination. It is essentially a form of taxation under which the consumers or producers of certain products subsidize the transportation needs of others. (John R. Meyer, et al., "The Economics of Competition in the Transportation Industries," Harvard University Press, Cambridge, 1959, p. 8.)

3. Since the railroads have exclusive access to their rights-of-way, which were built at enormous initial cost (and in many cases financed by Government land grants), they can charge highly profitable rates on selected traffic without fear of a competitor's quoting lower rates for the same service. Furthermore, the Reed-Bulwinkle exemption from antitrust laws, if retained, would permit parallel roads, where they exist, to agree on rates, thus safeguarding from undesired competition their profits on routes or commodities for which there is no lower cost transportation aavilable. Water carriers of bulk commodities have no similar protection, either by exclusive access to the waterways, by prohibitively high cost of entry by new competitors, or by antiturst exemptions.

4. The railroads' costs include a much larger proportion of fixed costs than do those of the water carriers. By allocating an excessive portion of their fixed costs to the traffic for which there is no water competition, they can reduce their rates on the traffic they seek to take away from the water carriers and in some cases still cover a distorted version of the cost of carrying it.

5. Finally, the difference in size and resources between the railroads and the water carriers is so great that in a rate-cutting competition, even if the railroads could not finance selective cuts out of profits on noncompetitive traffic, the water carriers would be driven out of business long before the railroads had to give up. One illustrative comparison is between the investment in the two industries. The total

investment of the line-haul railroads at the end of 1960 and 1961 was $35½ billion. The comparable figure of all for-hire water carriers was estimated in 1960 as $1.6 billion.

These five characteristics of the railroads will enable them to kill off water carrier competition unless restrained in some fashion. They are not characteristics that I think this committee would consider as entitling the railroads to take over the water carrier traffic.

Yet, we believe that the bill would enable the railroads to do just that, because the restraints that will be applicable under he bill will not be adequate to prevent the exploitation of these characteristics. Let us examine these restraints:

1. Section 2 of the Interstate Commerce Act merely restrains a railroad from unjustly discriminating in rates between its own shippers over the same routes under substantially similar circumstances and conditions. This restraint would not prevent a railroad from cutting its rates to any level in competition with a water carrier so long as it did not unjustly discriminate between shippers on the water-competitive route.

2. Section 3(1) of that act might be thought to restrain a railroad from cutting its rates on a water-competitive route below those on a noncompetitive route, except for the fact that the preference or advantage forbidden is only that which is "undue" or "unreasonable."

The existence of water competition has always been held by the Commission to be a consideration to be taken into account in determining that a lower rate to meet such competition was not unduly preferential. In any event, the proviso added in 1940 prevents the application of section 3(1) on complaint of a competing carrier.

3. Section 1 of the Sherman Act would have no application to rate cutting in the absence of a combination or conspiracy.

4. Section 2 of the Sherman Act would have no application in the absence of proof of a monopoly or attempt or consipracy to monopolize. Judge Loevinger, in hearings on the predecessor bill said, "If a carrier undertook to haul below cost for the purpose of driving a competitor out of business, it seems to me this would be monopolistic." (House committee hearings, p. 96.)

This statement made it sound easy to use section 2 of the Sherman Act to defend water carriers from destructive railroad rate competition. But notice carefully what is involved.

First, the rate must be below "cost." What did Judge Loevinger mean by that term, or, more important, what would be the standard applied by a court in an antitrust case? In the recent *National Dairy* case under the Robinson-Patman Act, and even more recently in the *New Haven Railroad* case involving competition between rail and coastal water carriers, the Supreme Court held that it did not need to decide what "cost" meant and, therefore, would not decide it.

Moreover, the costing of railroad transportation is a matter on which experts can differ and differ greatly. To some extent, the Interstate Commerce Commission has been able to bring some order out of chaos in this field, but is there any assurance that the Commission's cost standards would be accepted in applying the provisions of section 2 of the Sherman Act?

Second, and more important, there must also be proof of a purpose of driving a competitor out of business. The mere establishment of

a rate below cost would not of itself be proof of such purpose. To prove that a railroad had the necessary intent when it cut rates in competition with a water carrier may well require one of those exhaustive, time-consuming, and highly expensive searches through railroad files—to turn up an indiscreet interoffice memo—that are such common features of antitrust practice. Few water carriers can afford this protection.

In addition, we have a general objection to entrusting the protection of water carriers from the railroads to a great number of district courts—almost 100—scattered throughout the country.

Whatever system of safeguards may be substituted for the minimum rate power of the Commission if this bill is enacted, we would hope that their administration would be in the hands of the Commission.

While we believe that it has recently gone much too far in letting the railroads cut rates, nevertheless, it is an expert body with complete familiarity with the problems of carrier competition. A single agency, is, moreover, likely to develop, much more rapidly than scores of district courts, a coherent application of any set of safeguards that may be made applicable by the bill.

As to the ineffectiveness of the antitrust laws to afford the needed protection, however, history provides far more conclusive evidence than the most expert speculation can.

The battle between water carriers and railroads is as old as the railroads. Toward the end of the last century, the railroads had, however, practically swept the field. Their principal weapons were two:

(1) The purchase of water carriers and their operation at rates designed to drive other water carriers out of business; and

(2) The manipulation of railroad rates on water-competitive routes.

The artificial advantages that railroads have in competition of this nature has been well recognized and I needn't dwell upon them. However, Congress was not convinced of the need to grant power in minimum rate regulation in 1907 of 1912. Other expedients were first tried.

In 1910, the long-haul-short-haul clause was amended to require specific grants of relief by the Interstate Commerce Commission, and a clause was added which is now section 4(2). This latter was intended to discourage destructive rate cutting in competition with water carriers by making it more difficult for the railroads to increase rates after eliminating water competition.

In 1912, the Panama Canal Act was passed, making it unlawful for a railroad to have an interest in an actual or potential water carrier competitor.

Neither of these stautory provisions was, however, adequate to make possible the revival of a water carrier industry. It was not until 1920 that Congress finally granted the power, long sought by the Commission, to prescribe minimum rates. One of the principal express purposes in doing so was to enable the Commission to protect a potential water carrier industry from the destructive rate-cutting devices of the rails.

It is only since this grant of the minimum-rate power that a water carrier industry has found it possible to exist. Before 1920, there were the same supposed safeguards as are offered by the present bill—

the antitrust laws and the other provisions of the Interstate Commerce Act. But water carriers could not survive railroad attack.

This bit of history is presumably known to the administration proponents of withdrawal of the minimum-rate power. We do not see how they can ignore it. We have heard no explanation why it is not relevant today. We do not understand why the railroads will not, under this bill, be just as able as they were before 1920 to drive their lower cost competitors off the waterways by selective rate cutting.

On this review, our organization concluded that the bill as framed would be clearly against the public interest. But we were not satisfied to rest with this conclusion. We explored the possibility of application of Clayton and Robinson-Patman Act price provisions.

The antitrust laws declared applicable by the bill apparently do not include section 2 of the Clayton Act (as amended by Robinson-Patman) and section 3 of the Robinson-Patman Act. Even if the bill were amended to include these, however, the problem of adequate safeguards for the water carriers would not be solved.

Those two sections, it is reasonably clear, do not apply to services, such as transportation, but merely to commodities. We, therefore, considered amending these provisions for the purpose of applying them to transportation. One of these would, if thus amended, make discrimination in rates unlawful. The other would make unreasonably low rates unlawful if intended to destroy a competitor.

After careful consideration, however, this possibility had to be rejected for a number of reasons, among which was one most obvious: Both provisions are subject to the defense that the seller—and thus, if amended, the carrier—was in good faith meeting the low price (or rate) of his competitor. If the railroads could, without regard to cost or discrimination, thus satisfy the amended Clayton and Robinson-Patman provisions by "meeting" the level of barge rates, they could, of course, destroy barge competition, since their service is admittedly superior.

If their ability to meet the level of barge rates was not the result of either their misallocation of costs or their temporary acceptance of losses in the hope of later recoupment, or a combination of the two, the barge lines would have no legitimate grounds for complaint. As of today, however, the barge lines remain the lower cost mode of transportation.

So far I have approached this problem from the point of view of the public interest in the maintenance of a water-carrier industry.

Destruction of the water-carrier industry would render largely valueless all the transportation benefits which have been used historically in justification of waterway improvements such as the canalization of the Arkansas River which is now in progress. Apart from other benefits used in justifying such projects such as flood control, irrigation, municipal and industrial use, hydroelectric power, recreation, et cetera, the transportation cost savings made available to the public through such projects are a major factor in the calculation of benefit-cost ratios. Water carriers are the tools which the public requires in order to make these benefits available and if railroads are to be permitted to put these tools out of business there is little possible that new projects can be justified or, indeed, that existing waterway improvements should be maintained.

Now, let me turn to some of the immediate effects of the proposal on shippers, if enacted.

Of course, for the period while a rate war between railroads and water carriers is in progress, shippers on the water-competitive routes will receive the benefit of extremely low rates. Shippers on noncompetitive routes will or will not be at a disadvantage, depending on the railroads' policy as to extending water-competitive rates to inland routes.

If the water-competitive route and the noncompetitive route are served by different railroads, there is nothing the Interstate Commerce Commission will be able to do under section 3(1) to help the inland shipper. And even if they are served by the same railroad, the Commission has generally treated the existence of competition on one route and its absence on another as making section 3(1) inapplicable.

Shippers on noncompetitive routes, as well as shippers of commodities for which water transportation is not suitable, will in all likelihood find themselves subsidizing the railroads' rate wars against the water carriers.

Most important of all, from the shippers' standpoint, perhaps, would be the effect of the proposal on shippers competing in the same market but located on different railroads. It is only the minimum rate power of the Commission under section 15 that has enabled it to accomplish rate adjustments so as to eliminate rate preferences and prejudice in such a situation.

This point is fully developed in a letter to Traffic World magazine written by a recognized expert on rates who is a member of the staff of the Interstate Commerce Commission, and I should like to submit a copy of this letter as reprinted in the Traffic World of December 15.

The CHAIRMAN. That will be received.

(The document referred to follows:)

[From the Traffic World, Dec. 15, 1962]

ATTORNEY-EXAMINER POINTS OUT LIMITATIONS ON ICC POWER TO PRESCRIBE SPECIFIC RATES

An ICC attorney-examiner who has written books and magazine articles on elements of ratemaking in transportation has expressed disagreement with a contention made by Newton Morton, associate professor of transportation at Kent State University, to the effect that repeal of the power of the ICC to control minimum rates on bulk commodities and agricultural and fishery products would not materially threaten the stability of the existing rate structure, because the ICC would retain the right to set specific rates.

In a letter that appeared under the "From Our Readers" heading in the November 24 issue of Traffic World, Professor Morton (an author of textbooks and writer of articles on transportation subjects) made the following statements, among others, concerning the so-called deregulation bill, S. 3243, in the last Congress:

"I simply cannot understand whether it is apathy, apprehension, misrepresentation, or lack of understanding of the terms of the (interstate commerce) act that prompts the flood of comments that the bulk commodity exemption contemplated under S. 3243 threatens the stability of our rate structure because of the lack of any controls by the ICC in the event of the proposed bill being passed. The right to set specific rates would be retained, so far as I can determine. * * *"

Glenn L. Shinn, an attorney-examiner at the ICC, has pointed to what he terms "some important limitations on the ICC's power to prescribe rates, especially specific rates," in a letter to the editor of Traffic World. The text of Mr. Shinn's letter follows:

"The November 24, 1962, issue of Traffic World at page 66 contains a very interesting statement by Prof. Newton Morton (Kent State University) concerning the legislative proposal to repeal ICC minimum rate power with respect to regulated rates on bulk and agricultural commodities.

"Professor Morton seems to believe that the repeal of ICC minimum rate power would not materially threaten the 'stability of our rate structure,' presumably from either carrier or shipper viewpoint. His judgment on this rests primarily on the belief that 'the ICC would continue to retain the right to set specific rates, which would prevent rates from getting too low,' and 'would also make unnecessary the application of the Sherman Act.'

"I've got news for Professor Morton about some important limitations on the ICC's power to prescribe rates, especially specific rates. The general rule is that the Commission has no power whatever under sections 3(1) and 15(1) to prescribe maximum, minimum, or specific (precise) rates in a case, involving only undue prejudice in two important situations. They are: First, when the rate prejudice in question results from carrier competition at one point and the absence of such competition at another point; and, second, when the same carrier or same group of carriers do not effectively participate in the rates on both the prejudiced traffic and the preferred traffic. This second limitation on the Commission's power to prescribe rates applies regardless of whether the prejudicial rate adjustment is caused by carrier competition or by any other reason.

"Ample authority for these two highly important general principles which materially restrict the Commission's power to prescribe rates—specific or otherwise—will be found in the several hundred Commission and court cases cited in noted 76, 77 and 80 (p. 1157–1161) in 'Interstate Commerce Acts Annotated,' volume 2, and the same notes in subsequent volumes.

"In these two situations (that is, (a) where the rate disadvantage or preference results from carrier competition at one point and the absence of such competition at another point or (b) where the same carrier or group of carriers do not effectively participate in the rates on both the prejudiced and preferred traffic), the Commission today generally has no power to prescribe rates of any kind in a case involving only undue prejudice; and most certainly the same would be true if ICC minimum rate power were repealed.

"In these two highly important situations the Commission does have some control over prejudicial rates through the exercise of its power to prescribe minimum reasonable rates within the meaning of sections 1 and 15(1) of the act. The well understood purpose of repealing ICC minimum rate power—on bulk and agricultural commodities—is to allow broader and deeper carrier competitive rate cutting. If that objective should be achieved without adequate legislative safeguards, the inevitable result would be substantially more pronounced and damaging rate disadvantages and preferences in both quantity and degree especially as between shippers who have the benefit of carrier competition and those who do not. Upon reflection Professor Morton, I suspect, will agree that this is too obvious to require extended argument.

"WHY THERE'S 'MISAPPREHENSION'

"It has been my observation that the prevailing broad misapprehension concerning the Commission's power to remove undue prejudice can be explained in this fashion. In a relatively few situations of the two kinds previously mentioned—where damaging rate handicaps cannot be reached by the prohibition against undue prejudice standing alone—the Commission has prescribed reasonable rates within the meaning of sections 1 and 15(1) which corrected the rate prejudice, as well as the unreasonableness.

"But this, it should be emphasized, has happened only in cases in which particular rates have been challenged as being both unreasonable and unduly prejudicial, and the evidence of unreasonableness justified exactly the same relief, ratewise, as was necessary to remove the prejudice. But the situation is entirely different when there is no substantial evidence of unreasonableness or when the rate relief that is justified under the evidence of unreasonableness would not remove the rate prejudice.

"Two good illustrative cases in which the evidence of unreasonableness justified exactly the same relief, ratewise, as was necessary to remove the prejudice are: *New York* v. *U.S.*, 331 U.S. 284, and the *Ayrshire* case, 335 U.S. 573. But those two court decisions definitely do not stand for the principle that the Com-

mission has the power to prescribe rates, specific, or otherwise, under the prohibition against undue prejudice standing alone when the application of that prohibition is nullified either because the same carrier or group of carriers do not effectively participate in the rates on both the prejudiced and preferred traffic or because there is a dissimilarity of the material transportation circumstances and conditions such as generally result from the existence of carrier competition at one point and the absence of such competition at another point. As a matter of fact, the Commission's decisions on this point are directly contrary to any such construction of those two court decisions. To believe otherwise is a prime example of wishful thinking, to put it mildly.

"REFERENCE MATERIAL IN TRAFFIC WORLD

"If Professor Morton desires further information on this important matter, I suggest that he read my article published in the September 22, 1962, issue of Traffic World (p. 49) concerning the practical effect of a dissimilarity of circumstances and conditions on the application of the prohibition against undue prejudice; also the correspondence reported in the March 2, 1957, issue of Traffic World (pp. 32-36) concerning the limitation on the Commission's power to remove rate prejudice in situations where the same carrier or group of carriers do not effectively participate in the rates on both the prejudiced and preferred traffic.

"In particular situations, as distinguished from broad territorial adjustments, the chances of a finding unreasonableness that would remove rate disadvantages resulting from carrier competition at one point and the absence of such competition at another point—especially in the case of severely depressed carrier competitive rates at the preferred point—are slim indeed. This should be fairly obvious from this firmly established rule with which qualified practitioners in this business are well acquainted: Rates which meet the full requirements of reasonableness may be unlawful under other provisions of the act, particularly the prohibition against undue prejudice. *U.S.* v. *Ill. Cent. R.R.*, 263 U.S. 515, 524.

"Stated differently, the recognized and well-established standards for determining reasonableness differ materially from the standards utilized in determining undue rate prejudice. Another serious hurdle faced by a shipper in trying to show the unreasonableness of his higher normal rate in comparison with a depressed competitive rate should be mentioned. This is the equally well-established rule that a depressed competitive rate does not constitute a suitable standard for determining the reasonableness of a rate at a point where the same competitive conditions do not exist. See the many cases cited in note 229 (pp. 483–484) in 'Interstate Commerce Acts Annotated,' volume 1, and the same note in subsequent volumes.

"POINT OF AGREEMENT

I am in full agreement with Professor Morton that in evaluating the proposal to repeal ICC minimum rate power with respect to regulated rates on bulk and agricultural commodities, we should 'at least get squared away on the real situation' respecting the meaning and practical application of today's rate regulations. Certainly this is the first essential step in the exercise of informed judgment concerning the extent to which this proposal would modify—directly or indirectly—our existing statutory system of rate regulation.

"As President Kennedy has said about another matter: 'Don't take down the fence until you know why it was put up.'"

Mr. WRIGHT. When the rate wars that would follow enactment of this bill are concluded in the only way probably—the death of water transportation—the railroads will be in a position to increase their rates without the restraint imposed by water competition.

Without the carriers operating upon the waterways the Nation will have lost this "absolutely controlling and beneficially regulating" natural influence and shippers on the water routes will have lost their low-cost transportation. And those shippers on inland routes who may have been able in the past to secure extension of water-competitive rates to their shipments will have lost this opportunity. The general level of cost of shipping exempt commodities will undoubtedly

rise; except, perhaps, for the larger shippers on the waterways who, in the meantime, may well have turned to private water carriage as the alternative to higher railroad rates.

When this development occurs, small shippers who cannot afford to run their own fleets of barges will be at a serious competitive disadvantage with the big shippers who can.

Finally, let me review the legislation in relation to the railroads.

In supporting the bill, the president of the Association of American Railroads last year said, "The railroads are in financial difficulty." Recent Interstate Commerce Commission figures, however, indicate a significant improvement in the railroads' position. In the first 9 months of 1962 they enjoyed a 6.8 percent increase in ton-miles of freight carried, their net operating income increased about 35 percent, and their net income rose a phenomenal 61 percent over that of the same period a year earlier.

The New Haven, today, is the only important railroad in bankruptcy or receiveship. It is worthwhile to try to relate the proposed legislation to that railroad. In the first place, the Commission's report on the New Haven ascribes its difficulties, not to unregulated water carrier competition, but to other factors.

In the second place, it is doubtful that exemption of the New Haven from minimum rate regulation on bulk commodities would help its situation.

It is questionable whether the small amount of traffic in bulk commodities now being carired by barges on routes served also by the New Haven would prove to be a source of profit to the railroad.

Perhaps in some way not clear to me the New Haven would derive some benefit from this bill, but I would suggest to this committee that it should regard the burden of proving the need for or desirability of the legislation as falling on its proponents. They should be asked to explain just how they expect the proposed exemption to help the New Haven, as well as any other railroads that are now in trouble.

Finally, let me refer to one point that has, perhaps, not been made as clear as it should. The railroads do not want the bill that is before you. The administration has proposed the bill as providing "equality" in treatment between the railroads and other modes of transportation. Those other modes, to the extent that they are exempt from ICC regulaion, are already subject to the antitrust laws. And the bill proposes the same thing for the railroads.

They are to be subject to the antitrust laws in connection with rates for exempt commodities. But this, in fact, the railroads do not want. It is common knowledge that in the period before the convening of the present Congress, railroad representatives were urging the administration to revise last year's bill so as to provide for the application of the Reed-Bulwinkle Act to rates on exempted commodities. In other words, they were seeking antitrust exemption as well as minimum rate exemption for the collective making of such rates. What they wanted was not merely equality with their water carrier and truck competitors, but superiority.

Fortunately, they were not successful.

On the other hand, without such immunity, it is not at all clear that the bill would be acceptable to the railroads and their shippers.

We urge this committee to satisfy itself on this score before making any final decision.

To conclude, we are convinced that the bill would result in the destruction of the water carrier industry, that as a result shippers would be prejudiced through the elimination of a low-cost mode of transportation, and that indeed it would be only through such destruction that the railroads would realize any benefit from the bill.

In view of the repeated efforts that Congress has made in the past to assure the country of the existence of a flourishing water transportation system and to provide navigable channels to serve most of our major cities, we cannot believe that Congress will wittingly cooperate now in the frustration of all such efforts.

Thank you for the opportunity of being heard.

The CHAIRMAN. Thank your, Mr. Wright.

Mr. Williams?

Mr. WILLIAMS. No questions.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. No.

The CHAIRMAN. Mr. Macdonald?

Mr. MACDONALD. I have just one, Mr. Chairman.

Are there water carriers in New England?

Mr. WRIGHT. There are water carriers along the New England coast and running up the Connecticut River.

Mr. MACDONALD. Barge carriers?

Mr. WRIGHT. Yes.

Mr. MACDONALD. Are there any in Massachusetts, do you know?

Mr. WRIGHT. There is some barge traffic in petroleum between New York harbor and Boston harbor. My own company operates a bulk cement carrier that runs from a loading point up the Hudson River into Boston harbor.

Mr. MACDONALD. What route?

Mr. WRIGHT. Down the Hudson, around Manhattan Island, up the sound, through the Cape Cod Canal, and into Boston.

Mr. MACDONALD. Thank you, sir.

The CHAIRMAN. Thank you very much.

(The complete prepared statement of David A. Wright is as follows:)

STATEMENT OF DAVID A. WRIGHT ON BEHALF OF WATERWAYS BULK TRANSPORTATION COUNCIL, INC.

My name is David A. Wright. I am appearing today on behalf of Waterways Bulk Transportation Council, Inc. The council is a nonprofit organization of shippers, carriers, and others interested in the maintenance of the exemptions in section 303 of the Interstate Commerce Act and in the development of bulk transportation on the inland waterways of this country; 45 percent of the members are shippers. They use all modes of transportation.

Last year I appeared before this committee to testify on the similar bill which it then had under consideration, and as I understand, the testimony given in those hearings will be considered by the committee in connection with the present proposal. I will, therefore, not repeat what I said then although it is still applicable.

At that time, I did not comment specifically on the provisions of the proposal to deregulate the railroads, other than to say that we supported the views expressed by witnesses for American Waterways Operators, Inc.

This year I should like to comment in more detail on these provisions of the bill before you.

In what I am about to say, I shall try to approach the problem from the point of view of the public interest, which is your main concern, and not merely from the narrower point of view of those using or providing a competing mode of transportation.

The proposal to exempt the railroads from minimium rate regulation in respect to the transportation of bulk and agricultural commodities and of passengers was intended to conform with a transportation policy described by the President in his recent letter to the Speaker as assuring the availability of services to "move people and goods * * * at the lowest cost consistent with health, convenience, and national security * * *." In particular, it was intended to carry out his recommendation that "there should be maximum reliance on the forces of competition consistent with a continuing need for protection against destructive competition between forms of transportation or beween competing carriers."

We warmly subscribe to these statements of general objectives.

The basic philosophy of our organization is that there should be no unnecessary restriction on freedom of competition. In the case of the transportation of bulk commodities by water, we believe that such freedom has served and is serving the public interest well.

We favor extending this freedom of competition as far as possible without opening up opportunities for destructive or unfair competition. That is why we support the expansion of the water carrier bulk commodity exemption as provided in section 2 of the bill.

And we would support proposals which would enable other modes of transportation to engage in what we would call honest rate competition. If in honest competition, the rails can take traffic away from the water carriers, they are entitled to it.

Because of this basic philosophy, our organization has this year carefully reexamined the provisions of section 1 of the bill to see if they would assure that railroad rate competition with the bargelines would be honest and that the water carrier industry would be protected against destructive and unfair competition.

We believe that if these questions cannot be answered affirmatively, the proposal is not in the public interest. We think that the availability of water transportation, at least where it is the truly low-cost mode of transportation, is of great importance to shippers, the public, and the Nation.

What safeguards against destructive competition by the railroads would be left by the bill in the absence of the Commission's minimum rate power, and how effective would they be? The bill makes reference to a number of statutory provisions that would restrain the railroads in connection with their rates on the exempted commodities:

1. Section 2 of the Interstate Commerce Act, making unlawful any unjust discrimination in rates between shippers.

2. Section 3(1) of the act, making unlawful any undue or unreasonable prefrence or adavntage in rates.

3. Section 1 of the Sherman Act, making illegal contracts and combinations in restraint of trade.

4. Section 2 of the Sherman Act, making it criminal to monopolize, or to attempt to monopolize, or to combine or conspire to monopolize any part of interstate commerce.

Our considered opinion, after reviewing these restraints and the history of their application, is that these are completely inadequate to prevent the destruction of the water carrier industry by the railroads through competition which we would not consider honest.

Before analyzing each of the statutory provisions, let me review the background against which the legislation would operate.

No legislation can possibly equalize the value of service of the competitive strength of water and rail carriers. Water service is, in several respects, inherently inferior. It is slower. It is generally available only to minimum loads of much larger size than railroad minimum loads. It is confined to the banks of the waterways, whereas the railroads reach all parts of the country. Combining water transportation with rail or truck to reach points off the waterways involves an added expense, the cost of transshipment.

Because of these disabilities, the water carriers could not possibly exist in competition with the railroads, except for one advantage they do have—the advantage of much lower fully distributed cost.

The average actual fully distributed cost to water carriers of moving a ton of commodities 1 mile is approximately 4 mills. The average actual fully distributed cost to rail carriers of such movement is approximately 14 mills.

Where the advantages of rail service that I have mentioned are not so important to a shipper as low cost of transportation, the water carriers have an essential role to play. If the railroads made rates based upon the true cost of providing their service, there is no doubt that the water carriers would be able to survive and to continue to perform the role of providing low cost transportation. Unfortunately, when the railroads find themselves in competition with the lower cost barge lines, they are willing largely to ignore factors of cost in their efforts to kill off the water carriers, except as they may in some way be restrained by the Interstate Commerce Commission or other agency.

The ICC figures for the year 1960, the last year for which figures are available, show that 72.5 percent of the total freight tonnage and over 65 percent of the total ton-mileage of class I railroads was handled at less than fully distributed cost. The same figures indicate that over 22 percent of the tonnage and nearly 16 percent of the ton mileage was delivered at less than out-of-pocket cost.

The railroads can afford to cut rates to kill competition, with little or no regard for costs, because of five characteristics in which they differ from the barge lines:

1. The railroads have a huge amount of traffic, in the same commodities as those carried by the water carriers, that is not subject to water carrier competition. On such landlocked traffic they can, subject to such restraints as may be placed on them by the competition of other railroads and of trucks (which are usually higher cost carriers, however) and by the Commission, raise rates so as to recoup the losses incurred by ratecutting on water-competitive routes.

2. Railroads also carry many commodities on water-competitive routes which, because of service requirements, are not adapted to water carriage. These consist largely of processed products of high value per pound falling in the "Manufactures and Miscellaneous" category. These, too, can be subjected to high rates to finance water-competitive losses.

The railroads operate a form of internal subsidy system. The heavy losses of their water-competitive traffic are more than recovered by the large profits on other movements. Thus, the shippers of commodities not adaptable to water movement are privately taxed to provide below-cost service where water competition is present. As Profs. John R. Meyer and Merton J. Peck have said: "The result of this process has been aptly named 'the value-of-service' method of rate determination. It is essentially a form of taxation under which the consumers or producers of certain products subsidize the transportation needs of others." [1]

3. Since the railroads have exclusive access to their rights-of-way, which were built at enormous initial cost (and in many cases financed by Government land grants), they can charge highly profitable rates on selected traffic without fear of a competitor's quoting lower rates for the same service. Furthermore, the Reed-Bulwinkle exemption from antitrust laws, if retained, would permit parallel roads, where they exist, to agree on rates, thus safeguarding from undesired competition their profits on routes or commodities for which there is no lower-cost transportation available. Water carriers of bulk commodities have no similar protection, either by exclusive access to the waterways by prohibitively high cost of entry by new competitors, or by antitrust exemptions.

4. The railroads' costs include a much larger proportion of fixed costs than do those of the water carriers. By allocating an excessive portion of their fixed costs to the traffic for which there is no water competition, they can reduce their rates on the traffic they seek to take away from the water carriers and in some cases still cover a distorted version of the cost of carrying it.

5. Finally, the difference in size and resources between the railroads and the water carriers is so great that in a rate-cutting competition, even if the railroads could not finance selective cuts out of profits on noncompetitive traffic, the water carriers would be driven out of business long before the railroads had to give up. One illustrative comparison is between the investment in the two industries. The

[1] John R. Meyer, et al., "The Economics of Competition in the Transportation Industries," Harvard University Press, Cambridge, 1959, p. 8.

total investment of the line-haul railroads at the end of 1960 and 1961 was $35½ billion. The total investment of all for-hire water carriers was estimated in 1960 as $1.6 billion.

These five characteristics of the railroads will enable them to kill off water carrier competition unless restrained in some fashion. They are not characteristics that I think this committee would consider as entitling the railroads to take over the water carrier traffic. Yet, we believe that the bill would enable the railroads to do just that, because the restraints that will be applicable under the bill will not be adequate to prevent the exploitation of these characteristics. Let us examine these restraints:

1. Section 2 of the Interstate Commerce Act merely restrains a railroad from unjustly discriminating in rates between its own shippers over the same routes under substantially similar circumstances and conditions. This restraint would not prevent a railroad from cutting its rates to any level in competition with a water carrier so long as it did not unjustly discriminate between shippers on the water-competitive route.

2. Section 3(1) of that Act might be thought to restrain a railroad from cutting its rates on a water-competitive route below those on a noncompetitive route, except for the fact that the preference or advantage forbidden is only that which is undue or unreasonable. The existence of water competition has always been held by the Commission to be a consideration to be taken into account in determining that a lower rate to meet such competition was not unduly preferential. In any event, the proviso added in 1940 prevents the application of section 3(1) on complaint of a competing carrier.

3. Section 1 of the Sherman Act would have no application to rate-cutting in the absence of a combination or conspiracy.

4. Section 2 of the Sherman Act would have no application in the absence of proof of a monopoly or attempt or conspiracy to monopolize. Judge Loevinger, in hearings on the predecessor bill said, "[I]f a carrier undertook to haul below cost for the purpose of driving a competitor out of business, it seems to me this would be monopolistic." (House Committee hearings, p. 96.) This statement made it sound easy to use section 2 of the Sherman Act to defend water carriers from destructive railroad rate competition. But notice carefully what is involved.

First, the rate must be below cost. What did Judge Loevinger mean by that term, or, more important, what would be the standard applied by a court in an antitrust case? In the recent National Dairy case under the Robinson-Patman Act, and even more recently in the New Haven Railroad case involving competition between rail and coastal water carriers, the Supreme Court held that it did not need to decide what cost meant and, therefore, would not decide it. Moreover, the costing of railroad transportation is a matter on which experts can differ and differ greatly. To some extent, the Interstate Commerce Commission has been able to bring some order out of chaos in this field, but is there any assurance that the Commission's cost standards would be accepted in applying the provisions of section 2 of the Sherman Act?

Second, and more important, there must also be proof of a purpose of driving a competitor out of business. The mere establishment of a rate below cost would not of itself be proof of such purpose. To prove that a railroad had the necessary intent when it cuts rates in competition with a water carrier may well require one of those exhaustive, time-consuming, and highly expensive searches through railroad files—to turn up an indiscreet interoffice memo—that are such common features of antitrust practice. Few water carriers can afford this protection.

In addition, we have a general objection to entrusting the protection of water carriers from the railroads to a great number of district courts, almost 100, scattered throughout the country. Whatever system of safeguards may be substituted for the minimum rate power of the Commission if this bill is enacted, we would hope that their administration would be in the hands of the Commission. While we believe that it has recently gone much too far in letting the railroads cut rates, nevertheless it is an expert body with complete familiarity with the problems of carrier competition. A single agency is, moreover, likely to develop, much more rapidly than scores of district courts, a coherent application of any set of safeguards that may be made applicable by the bill.

As to the ineffectiveness of the antitrust laws to afford the needed protection, however, history provides far more conclusive evidence than the most expert speculation can.

The battle between water carriers and railroads is as old as the railroads. Toward the end of the last century, the railroads had, however, practically swept the field. Their principal weapons were two: (1) the purchase of water carriers and their operation at rates designed to drive other water carriers out of business; and (2) the manipulation of railroad rates on water-competitive routes.

The National Waterways Commission, appointed by President Theodore Roosevelt in 1907 and composed of members from both Houses of Congress, reported in 1912 that among the artificial advantages the railroads had over the water carriers, "The first and most important * * * is the right of the railway to charge lower rates between points where their line is in competition with water routes" (p. 69). A majority of the Commission recommended giving the Interstate Commerce Commission power to prescribe minimum railroad rates to protect water carriers from destructive competition (p. 73).

However, Congress was not yet convinced of the need to grant this power. Other expedients were being tried.

In 1910 the long-haul short-haul clause was amended to require specific grants of relief by the Interstate Commerce Commission, and a clause was added which is now section 4(2). This latter was intended to discourage destructive rate-cutting in competition with water carriers by making it more difficult for the railroads to increase rates after eliminating water competition.

In 1912, the Panama Canal Act was passed, making it unlawful for a railroad to have an interest in an actual or potential water carrier competitor.

Neither of these statutory provisions was, however, adequate to make possible the revival of a water carrier industry. It was not until 1920 that Congress finally granted the power, long sought by the Commission, to prescribe minimum rates. One of the principal express purposes in doing so was to enable the Commission to protect a potential water carrier industry from the destructive rate-cutting devices of the rails.

With respect to the proposal to give this power to the Commission, the House committee report on the bill said:

"With this power the Commission could prevent a rail carrier from reducing a rate out of proportion to the cost of service by establishing a minimum below which such carrier could not fix its rate. It would also prevent a rail carrier from destroying water competition between competitive points by prohibiting such carrier from so reducing its rates as to destroy its water competitor. Circumstances have been cited where the rail carrier destroyed its water competitor by such a reduction of rates as to make it impossible for the water carrier to survive. When once competition was thus driven off the rail rates would be restored and would rise to even higher levels." (H. Rept. 456, 66th Cong., 1st sess., p. 19.)

And in a speech on the floor of the House, the chairman of the committee, Congressman Esch, said:

"We give (the Commission) the right of fixing the minimum rate in order that it may meet some of the problems arising out of the long-and-short-haul clause as contained in the fourth section. We give it the right of fixing a minimum rate in order that it may protect a water carrier against the destructive competition of a rail carrier. You know the story—you can read it upon every mile of every inland waterway of the United States—how the water carrier started, and then the rail carrier paralleled the river bank and made a rate so low that the water carrier had to abandon its line and its route, and after such abandonment the rail carrier raised the rate and the public was no better off and was, in fact, worse off than before. If the Commission fixes the minimum rate, it can say to the rail carrier: 'Thus far you can go, but no farther.' The water carrier must be permitted to live. To do this we must provide for the minimum rate." (58 Con. Rec. 8317.)

It is only since this grant of the minimum rate power that a water carrier industry has found it possible to exist. Before 1920, there were the same supposed safeguards as are offered by the present bill, the antitrust laws, and the other provisions of the Interstate Commerce Act. But water carriers could not survive railroad attack.

This bit of history is presumably known to the administration proponents of withdrawal of the minimum rate power. We do not see how they can ignore it. We have heard no explanation why it is not relevant today. We do not understand why the railroads will not, under this bill, be just as able as they were

before 1920 to drive their lower cost competitors off the waterways by selective rate cutting.

On this review, our organization concluded that the bill as framed would be clearly against the public interest. But we were not satisfied to rest with this conclusion. We explored the possibility of application of Clayton and Robinson-Patman price provisions. The antitrust laws declared applicable by the bill apparently do not include section 2 of the Clayton Act (as amended by Robinson-Patman) and section 3 of the Robinson-Patman Act. Even if the bill were amended to include these, however, the problem of adequate safeguards for the water carriers would not be solved. Those two sections, it is reasonably clear, do not apply to services, such as transportation, but merely to commodities. We, therefore, considered amending these provisions for the purpose of applying them to transportation. One of these would, if thus amended, make discrimination in rates unlawful. The other would make unreasonably low rates unlawful if intended to destroy a competitor.

After careful consideration, however, this possibility had to be rejected for a number of reasons, among which one was most obvious: Both provisions are subject to the defense that the seller—and thus, if amended, the carrier—was in good faith meeting the low price (or rate) of his competitor. If the railroads could, without regard to cost or discrimination, thus satisfy the amended Clayton and Robinson-Patman provisions by meeting the level of barge rates, they could, of course, destroy barge competition, since their service is admittedly superior. If their ability to meet the level of barge rates were not the result of either their misallocation or costs of their temporary acceptance of losses in the hope of later recoupment, or a combination of the two, the bargelines would have no legitimate grounds for complaint. As of today, however, the bargelines remain the lower cost mode of transportation.

So far I have approached this problem from the point of view of the public interest in the maintenance of a water-carrier industry.

Destruction of the water-carrier industry would render largely valueless all the transportation benefits which have been used historically in justification of waterway improvements such as the canalization of the Arkansas River which is now in progress. Apart from other benefits used in justifying such projects such as flood control, irrigation, hydroelectric power, recreation, etc., the transportation cost savings made available to the public through such projects are a major factor in the calculation of benefit-cost ratios. Water carriers are the tools which the public requires in order to make these benefits available and if railroads are to be permitted to put these tools out of business there is little possibility that new projects can be justified or, indeed, that existing waterway improvements should be maintained.

Now, let me turn to some of the immediate effects of the proposal on shippers, if enacted.

Of course, for the period while a rate war between railroads and water carriers is in progress, shippers on the water-competitive routes will receive the benefit of extremely low rates. Shippers on noncompetitive routes will or will not be at a disadvantage, depending on the railroads' policy as to extending water-competitive rates to inland routes. If the water-competitive route and the noncompetitive route are served by different railroads, there is nothing the Interstate Commerce Commission will be able to do under section 3(1) to help the inland shipper. And even if they are served by the same railroad, the Commission has generally treated the existence of competition on one route and its absence on another as making section 3(1) inapplicable.

Shippers on noncompetitive routes, as well as shippers of commodities for which water transportation is not suitable, will in all likelihood find themselves subsidizing the railroads' rate wars against the water carriers.

Most important of all, from the shipper's standpoint, perhaps, would be the effect of the proposal on shippers competing in the same market but located on different railroads. It is only the minimum rate power of the Commission under section 15 that has enabled it to accomplish rate adjustments so as to eliminate rate preferences and prejudice in such a situation. This point is fully developed in a letter to Traffic World written by a recognized expert on rates who is a member of the staff of the Interstate Commerce Commission, and I should like to submit a copy of this letter as reprinted in the Traffic World of December 15.

When the rate wars that would follow enactment of this bill are concluded in the only way probable—the death of water transportation—the railroads

will be in a position to increase their rates without the restraint imposed by water competition.

In the course of its studies of transportation for a number of years leading up to the original Act to Regulate Commerce, Congress heard the following in the report of the famous Senator Shelby M. Cullom, chairman of the Senate Select Committee on Commerce in 1887:

"The conclusion of the committee is therefore that a natural or artificial channels of communication by water, when favorably located, adequately improved, and properly maintained afford the cheapest method of long distance transportation now known, and that they must continue to exercise in the future, as they have invariably exercised in the past, an absolutely controlling and beneficially regulating influence upon the charges made upon any and all other means of transit."

Without the carriers operating upon the waterways the Nation will have lost this "absolutely controlling and beneficially regulating" natural influence and shippers on the water routes will have lost their low-cost transportation. And those shippers on inland routes who may have been able in the past to secure extension of water-competitive rates to their shipments will have lost this opportunity. The general level of cost of shipping exempt commodities will undoubtedly rise.

Except, perhaps, for the larger shippers on the waterways who, in the meantime, may well have turned to private water carriage as the alternative to higher railroad rates. When this development occurs, small shippers who cannot afford to run their own fleets of barges will be at a serious competitive disadvantage with the big shippers who can.

Finally, let me review the legislation in relation to the railroads.

In supporting the bill, the president of the Association of American Railroads last year said, "The railroads are in financial difficulty." Recent Interstate Commerce Commission figures, however, indicate a significant improvement in the railroads' position. In the first 9 months of 1962 they enjoyed a 6.8 percent increase in ton-miles of freight carried, their net operating income increased about 35 percent, and their net income rose a phenomenal 61 percent over that of the same period a year earlier.

Of all the 229,369 miles of line-haul railroad in the country, the total operated by railroads in bankruptcy or receivership on December 31, 1961, was 2,365, of which the New York, New Haven & Hartford represented 1,735. The figure for the previous year, which did not include the New Haven, was 1,259. This was a 90 percent reduction from December 31, 1950, only 10 years previously, when 12,224 miles were operated by trustees or receivers.

The New Haven, today, is the only important railroad in bankruptcy or receivership. It is worthwhile to try to relate the proposed legislation to that railroad. In the first place, the Commission's report on the New Haven ascribes its difficulties, not to unregulated water carrier competition, but to a combination of mismanagement and the floods of 1955. In the second place, it is doubtful that exemption of the New Haven from minimum rate regulation on bulk commodities would help its situation. It is questionable whether the small amount of traffic in bulk commodities now being carried by barges on routes served also by the New Haven would prove to be a source of profit to the railroad.

Perhaps in some way not clear to me the New Haven would derive some benefit from this bill, but I would suggest to this committee that it should regard the burden of proving the need for or desirability of the legislation as falling on its proponents. They should be asked to explain just how they expect the proposed exemption to help the New Haven, as well as any other railroads that are now in trouble.

The immediate effect of cutting railroad rates to such a level as to take traffic from the water carriers will, generally, be rail transportation at less than any reasonable calculation of cost. Only if the maneuver succeeds in killing off water competition, thus eventually permitting the railroads to increase their rates to a level at least sufficient to cover out-of-pocket costs and contribute to fixed costs, will the railroads be benefited at all.

Finally, let me refer to one point that has, perhaps, not been made as clear as it should. The railroads do not want the bill that is before you. The administration has proposed the bill as providing equality in treatment between the railroads and other modes of transportation. Those other modes, to the extent that they are exempt from ICC regulation, are already subject to the antitrust

laws. And the bill proposes the same thing for the railroads. They are to be subject to the antitrust laws in connection with rates for exempt commodities. But this, in fact, the railroads do not want. It is common knowledge that in the period before the convening of the present Congress, railroad representatives were urging the administration to revise last year's bill so as to provide for the application of the Reed-Bulwinkle Act to rates on exempted commodities. In other words, they were seeking antitrust exemption as well as minimum rate exemption for the collective making of such rates. What they wanted was, not merely equality with their water carrier and truck competitors, but superiority.

Fortunately, they were not successful.

On the other hand, without such immunity, it is not at all clear that the bill would be acceptable to the railroads and their shippers. We urge this committee to satisfy itself on this score before making any final decision.

To conclude, we are convinced that the bill would result in the destruction of the water carrier industry, that as a result shippers would be prejudiced through the elimination of a low cost mode of transportation, and that indeed it would be only through such destruction that the railroads would realize any benefit from the bill. In view of the repeated efforts that Congress has made in the past to assure the country of the existence of a flourishing water transportation system, we cannot believe that Congress will wittingly cooperate now in the frustration of all such efforts.

The CHAIRMAN. The next witness is William E. Patterson.

STATEMENT OF WILLIAM E. PATTERSON, MANAGER OF LOCAL & SHORT HAUL CARRIERS NATIONAL CONFERENCE

The CHAIRMAN. Mr. Patterson, you may proceed.

Mr. PATTERSON. Mr. Chairman and members of the committee, my name is William E. Patterson. I am manager of the Local & Short Haul Carriers National Conference located at 1616 P Street, NW., Washington 6, D.C. It is 1 of 12 such conferences affiliated with the American Trucking Associations, Inc., representing natural segments of the industry. My appearance here today is on behalf of the conference and does not represent the official position of the American Trucking Associations.

The conference which I represent is composed of truck operators who primarily serve the metropolitan commercial zones and terminal areas of the United States. These carriers operate in all cities, towns of the United States and their suburban areas.

In addition, many of our members operate in interstate commerce solely within a single State or over relatively short distances between States. These carriers are the truly small, independent businessmen in transportation. While there is no exact figure as to the total number of such carriers, it has been estimated that there are over 70,000 trucking companies in this segment of the trucking industry.

We strongly believe H.R. 4700 in its present form is a step in the wrong direction. My carriers have directed me to urge that the current full force of regulation by the Interstate Commerce Commission should be extended to those areas of transportation which are not now regulated.

We testify from the knowledge that, in the years since regulation, the regulated carriers—highway, rail, and water—have enjoyed a far greater degree of stability and prosperity than before regulation. We have, however, in recent years seen our business go downward, due solely to the chaos created by the lack of regulation.

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Our carriers in the commercial zones and terminal areas are operating, in competition with each other, subject to the various exemptions of the Interstate Commerce Act, which are attached as an appendix to this statement. These operations are becoming so chaotic and so highly unstable as to make it almost impossible to achieve the kind of service to which the public is entitled.

We are aware that there will always be opposition to any position calling for a repeal of special privileges, no matter how outmoded those privileges may be. The situation in these areas is one of terribly depressed rates and difficult business operations. The mortality rate among our carriers is outrageous. It is unfair to burden these people by failure to adequately supervise the competitive situation in which they operate.

In addition to the experience of the regulated carriers as an indication of what regulation means, we have our own limited experience to fall back on, too. Our carriers know from their own experience that, in those States which have undertaken to regulate their operations—as, for example, the States of Massachusetts, Pennsylvania, and Washington—they have achieved a higher degree of stability. This has not priced their service out of the reach of their customers. As a matter of fact, it has enabled them to operate with a greater degree of economic certainty to the gain of the public.

We are absolutely opposed to H.R. 4700 in its present form. We strongly urge that, if the committee takes any action with the President's recommendation for improving the situation of the "for hire" carrier, that it be the President's alternative suggestion of full regulation for all. We want those areas of common carriers, not regulated at this time, made subject to regulation.

I thank you for allowing me to appear before you to present the views of this segment of the motor carrier industry. If there are any questions I will be glad to try to answer them for you.

(The appendix attached to prepared statement of William E. Patterson is as follows:)

APPENDIX

A list of exemptions and special privileges presently permitted by the Interstate Commerce Act, the repeal or sharp curtailment of which is advocated by the Local & Short Haul Carriers National Conference as a solution to the problems confronting the "for hire" transportation system of the country:

1. Sec. 202(c)1, and 202(c)2: These are the two exemptions giving railroads, water carriers, freight forwarders, motor carriers, and express companies terminal areas in which they can operate without motor carrier authority or regulation of rates.
2. Sec. 203(a)14: This is another exemption granted to express companies from motor carrier regulation.
3. Sec. 203(b)8: Commercial zone exemption.
4. Sec. 217(b): This makes Sec. 22 rates applicable to motor carriers.
5. Sec. 203(b)5: Transporttaion exemption for agricultural co-ops.
6. Sec. 203(b)6: Agricultural commodity exemption.
7. Sec. 203(b)7: Newspaper distribution exemption.
8. Sec. 203(b)7a: Transportation incidental to transportation by aircraft.
9. Sec. 203(b)9: Casual or occasional exemption.
10. Sec. 204(a)4a: Single-State transportation not of such a nature, character, or quantity as to impair uniform regulation.
11. Sec. 204(f): Trip-lease exemption.

12. Sec. 408: Permits motor carriers to publish special distribution rates for freight forwarders.
13. Sec. 409: Allows motor common carriers to make special contract rates with freight forwarders for moving traffic up to 450 miles distance.

The CHAIRMAN. Thank you very much, Mr. Patterson, for your very concise and clear statement of the position of your organization.

Are there any questions, Mr. Dingell?

Mr. DINGELL. I was wondering if the witness would be able to submit to the committee the amount of carriers, either in ton-miles or in dollars, that he has indicated under the exemptions listed in his appendix.

Perhaps you could do it item by item, or perhaps you could do it for a few of them, or perhaps you could give us a total estimate of the amount of carriage.

Mr. PATTERSON. In some instances, I think we can get the exact figures—or close to exact. In other instances, it would have to be a guess, because there are the carriers that are exempt under the ICC. There is no way to obtain that information

Mr. DINGELL. I think it would be helpful for this committee to have that information.

(The information requested follows:)

[Draft]

MEMORANDUM

MAY 20, 1963.

To: W. E. Patterson, Manager, Local & Short Haul Carrier National Conference.
From: Allan C. Flott.
Subject: Volume of freight handled under various motor carrier exemptions.

Pursuant to your request for data on the above subject we have compiled the following data.

The exemptions under 202(c)1, 202(c)2, and 203(b)8, cover most of the physical movements of goods in local areas, whether as pick up and delivery for intercity transportation or purely intraurban movements, even though the land movements may be interstate in character. No data is available on the volume of such movements on a current basis. The latest information of this kind covered the year 1941, and was published in the U.S. Office of Defense Transportation's "A Review of Highway Transport and Transit Industries During the War," dated November 1945. On page 2 of that document is the following statement: "In 1941, probably around 9 billion tons of freight were 'carried' in domestic commerce by various transportation agencies, of which about 4 billion tons were 'carried' in intercity service or by intercity agencies and, while it is impossible to estimate with any degree of accuracy, approximately 5 billion tons in local service. Approximately 16 percent of the total tons in intercity service, and substantially all of the local traffic, were handled by truck. * * *"

If these ratios hold true today then it appears that substantially more than half of all freight moving in domestic commerce is affected by these exemptions.

The 203(a)14 exemption for express companies pertains specifically to the Railway Express Co. and the extent of exemptions as stated in the ICC Act reads in part as follows: "* * * except transportation by motor vehicles by an express company to the extent that such transportation has heretofore been subject to part I (railroad regulation), to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to part I." To date no one is sure what partion of REA's traffic is subject to part I of the act and what is not. REA maintains one thing and the Commission something else. The question of what express revenues are exempt under section 203(a)14 and what revenues are not exempt

has been before the courts for a number of years and continues to be at present. A breakdown of REA express revenues for 1960 is as follows:

(1)	Performed by REA	$247,984,727
(2)	Performed by others	125,044,089
(3)	Railroads	98,934,523
(4)	Electric lines	7,931
(5)	Steamboats	93,732
(6)	Air express	23,504,306
(7)	Miscellaneous	2,503,597
	Total	373,028,816

The only portion of the above revenues affected by section 203(a)14 are items 1 and 7. Item 7 consists largely of transportation performed by motor carriers under contract. There is no information available that indicates what portion is exempt under section 203(a)14 and subject to part I of the act but it probably represents most of the $250 million. The only point which has been definitely established to date is that line-haul motor carrier operations are not exempt and this would be a very small portion of the total.

There has never been any detailed study on the amount of Government traffic moving at reduced rates, section 22, or the motor carrier portion, section 217b. The Defense Traffic Management Service estimates that in fiscal 1962 there were 24,001,200 tons of military traffic moved in the continental United States at a cost of $451,200,000 of which trucks moved 8,007,700 tons at a cost of $213,800,000. Recent figures of the nonmilitary freight bill are not available but would be considerable as GSA estimates that its savings in 1962 from negotiated reductions in freight charges by all modes of transportation was $13,224,979. This does not include reductions automatically given by the carriers themselves. In addition to the Federal Government, State and local governments are eligible for section 22 reductions and no information is available on these reductions.

There is no data available on section 203(b)7, the newspaper distribution exemption. It is believed that this would be relatively small.

Section 203(b) 5 and 6, agricultural exemptions, were recently examined by the Department of Agriculture.

In two recent publications The Role of Truck Brokers in the Movement of Exempt Agricultural Commodities and For-Hire Motor Carriers Hauling Exempt Agricultural Commodities * * * nature and extent of operations, the Department attempted to develop data on the volume of movement under these exemptions. They were only partially successful.

In the first publication, the operation of 246 truck brokers operating in 1959 are examined. "These 246 brokers booked 3,808,000 tons of agricultural commodities in interstate commerce and 143,000 tons in intrastate commerce—a total of 3,952,000 tons during 1959."

In the second publication, covering the year 1960, "1,514 exempt for-hire truckers * * * moved 9.2 million tons of exempt commodities—the equivalent of 574,000 truckloads—and accumulated 278 million miles in their operation, some of which were nationwide. These truckers represented a 27-percent return of mail questionnaires sent to 5,584 firms—firms drawn by a random sample from a listing of 27,920 names." The 1,514 carriers sampled represented about 5 percent of the 27,920 names on the list. The list was comprehensive but since it was several years old it was incomplete. Since it was an old list, the carriers responding were better established and probably larger than the average for all exempt carriers.

Sections 408 and 409 pertain to freight forwarders. Following is a breakdown of the revenues of freight forwarders as reported in Transport Statistics in the United States, 1961, Interstate Commerce Commission:

(1)	Performed by forwarders	$138,339,958
(2)	Performed by others	304,427,726
(3)	Railroads	179,144,943
(4)	Motor carriers	60,927,786
(5)	Water	1,642,555
(6)	Pickup and delivery	60,898,444
(7)	Other	1,813,998
	Total	442,767,684

In the above breakdown, all of the pickup and delivery revenues, item 6, are exempt under sections 202(c) 1 and 2. Portions of item 4 are exempt under sections 408 and 409 but exactly how much cannot be determined.

There is no data available indicative of the amounts of traffic moving under the following exemptions:

Section 203(b)7a (Transportation incidental to transportation by aircraft).
Section 203(b)9 (Casual or occasional exemption).
Section 204(a)4a (Single State transportation not of such a nature, character, or quantity as to impair uniform regulation).
Section 204(f) (Trip-lease exemption).

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. I understand that you feel that everyone should be regulated. This is the feeling of the small carrier which you say you represent. They have no objection to coming to the ICC to establish their rates, and so forth, the small independent man?

Mr. PATTERSON. No; we want it this way.

Mr. ROGERS of Florida. All right; thank you.

The CHAIRMAN. Mr. Hemphill?

Mr. HEMPHILL. No questions, except to congratulate you on the brevity of your statement, which I think shows your views and helps us with our time problem.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. No questions.

The CHAIRMAN. Thank you very much, Mr. Patterson.

Mr. Orrin H. Fraley.

Mr. Younger?

Mr. YOUNGER. Mr. Chairman, I would like the privilege of welcoming one of my own constituents here. Their headquarters are in Menlo Park and I have met with Mr. Fraley several times.

I would like to welcome him before the committee.

Mr. FRALEY. Thank you, Mr. Younger.

The CHAIRMAN. You may proceed, Mr. Fraley.

STATEMENT OF ORRIN H. FRALEY, VICE PRESIDENT, CONSOLIDATED FREIGHTWAYS, INC., MENLO PARK, CALIF.

Mr. FRALEY. Thank you, Mr. Chairman.

My name is Orrin Fraley. I live in Menlo Park, Calif., and I am vice president of Consolidated Freightways, a transportation company with which I have been associated for 30 years.

Consolidated Freightways is a motor common carrier in operation since 1929. It employs some 10,500 men and women in all of its operations. Carrier revenues in 1962 amounted to $133,200,000. The company's miles of route authority in the United States and Canada approximates 72,000. We have in service approximately 1,400 line-haul power units, over 5,000 line-haul trailers, and approximately 3,000 trucks, tractors, and semitrailers comprising our pickup and delivery equipment.

We consume approximately 40 million gallons of diesel fuel and gasoline annually, have 60,000 tires in service; and in 1962 paid almost $8 million in highway use taxes, both Federal and State.

Consolidated Freightways operations extend over a large geographical area. In the United States, our regular route common carrier rights extend from Boston to Baltimore on the east coast, across the

northern two-thirds of the country to the Pacific, and from San Diego to Alaska on the west coast. Consolidated Freightways is the largest trucking company in the United States based on either route miles or gross revenues. In Canada, we are the second largest trucking company with rights extending from Winnipeg to Vancouver and into Alaska. Our Alaska division is the largest trucking operation in Alaska.

I mention these facts merely to indicate that we are an experienced company in the truck transportation field, and also to indicate that we have enjoyed the patronage and the goodwill of shippers.

We began in a very modest way and have grown as our ability to serve shippers has increased.

I appear here as a spokesman for the carrier members of the Regular Common Carrier Conference of American Trucking Associations. I am a member of the board of governors of the conference, and am also Chairman of the Government Traffic and Defense Liaison Committee.

This Committee has been continuously engaged since 1950 in an effort to make the system services of motor common carriers more readily available to the Post Office Department.

I speak here in behalf of the motor common carrier industry. Our carriers can provide the postal system with a modern intercity network of transportation reaching in direct service every significant population center.

Mr. Chairman, your committee has before it H.R. 4701, and my testimony is directed to section 9 of this bill. This section has been drafted to implement a recommendation of the President in his transportation message of April 5, 1962, and again renewed in 1963. The wording of that recommendation is as follows:

> I also recommend that the Post Office Department be given greater flexibility in arranging for the transportation of mail by motor vehicle common carrier.

Section 9 of the bill now before this committee proposes that the desired flexibility in transportation be given the Postmaster General by amending section 321 of title III, part II, of the Transportation Act of 1940, as amended (49 U.S.C. 65), by——

> (1) striking out the second proviso in subsection (a) thereof and substituting therefor the following: "*Provided further,* That the head of an agency or such persons as he may designate may negotiate the provisions and prices of contracts, agreements, or other instruments for the purpose of procuring transportation, including in the case of the Postmaster General, mail transportation services performed by common carriers by motor vehicles when the services required can be procured from any common carrier lawfully operating in the territory where such services are to be performed, and services accessorial thereto for the United States, without regard to the provisions of any law requiring advertising for bids;".

The motor common carrier industry does not believe this minor amendment in the Transportation Act of 1940 will accomplish the aim of the President, or that it will give the Post Office Department any substantial flexibility over its present methods of obtaining highway transportation services.

We are aware that the Post Office Department, at hearings on this same matter before this same committee last year, supported the

amendment. The Department's witness advised the committee that the amendment—

would place the postal service in the same position as other Government agencies in its traffic management insofar as dealings with highway common carriers are concerned.

In summary, the Department indicated its service needs as follows:

(1) to use common carriers operating on regular and desirable schedules between two points and having excess capacity;

(2) to employ systemwide schedules such as worked out with buslines to transport letter mail;

(3) to obtain service from off-rail plants at irregular intervals to points throughout the United States, making use of direct negotiation rather than advertising for bids in the usual manner;

(4) to obtain rail-highway services jointly with railroads and motor carriers to reach points not on the railroads; in short, to obtain effective through service for mail just as other shippers do by means of trailer-on-flatcar service.

Indicating its plan for the limited use of the common carrier services sought, the Department said,

There is no intention of using this authority in lieu of normal star route contracting.

It is, therefore, quite clear that as of last year the Post Office Department sought only to cover certain "special situations" which they termed—

fairly new to the postal service, where common carriers (trucks) are best fitted to give the Department efficient and economical service.

We agree that changes in the postal statutes governing mail transportation are needed, but a return to "negotiated contracts" would be a step backward. Negotiated contracts were at the bottom of the mail contract scandals of the 1870's which led Congress to adopt the open, advertised bid. Mail contracts proved increasingly unsatisfactory with relation to the railroads as the years passed and were abandoned in 1916 for the present method of determining compensation through hearings before the Interstate Commerce Commission.

The Commission is empowered by Congress with authority to fix and determine mail compensation to be paid railroads for transporting mail; this method has proved workable since 1916.

Again, mail contracts proved disastrous in the experience of compensating the airlines in the developmental period of airmail. The clear abuses of negotiating contracts certainly contributed to provisions of the Civil Aeronautics Act of 1938 which empowered the Civil Aeronautics Board to set rates of mail compensation for the airlines. In each instance, the negotiated contract had been tried for many years, and in each instance experience proved it inadequate and costly.

It appears to the motor common carrier industry that the "negotiated contract" method has been completely discredited as a means of achieving fair and equitable rates of compensation to public carriers and to the Post Office Department. We do not believe, therefore, that this method of obtaining mail transportation services is any more likely to prove workable as the Post Office Department, and Congress, approach the mail transportation problem of today.

Mr. Chairman, I regret the necessity for spending time on this phase of the problem before the committee, but I believe the members of the committee will agree with our industry that the purpose of legislation can be achieved only if the right approach is made.

We do not believe that a minor amendment in the Transportation Act of 1940 is the right approach. We are supported in this view by an opinion of the Comptroller General numbered B-141203 and dated December 30, 1959. This opinion was given at the request of the Postmaster General, who was seeking at that time to find out if services could be procured from common carriers without advertising. The Postmaster General thought that the second proviso of section 321(a), title III, of the Transportation Act of 1940, as amended, would let him do that.

The Comptroller General in his reply said no, the cited proviso could not be relied upon, and among other things, said:

> It seems especially significant that an exception of such broad scope as you now suggest apparently was not even mentioned during the legislative deliberations (of the Transportation Act of 1940).

At another point, the Comptroller General's letter says:

> Thus, it seems abundantly clear that the transportation of mail was not within the purposes of intent of the enactment but, as you are aware, mail transportation services were then and are now covered by special legislation which sets out detailed criteria and requirements with respect to the means and methods of its distribution and transportation.

In the closing sentence of his letter, the Comptroller General says:

> We therefore are of the opinion that an extension by statutory construction of the exception provided by the last proviso of 49 U.S.C. 64(a) to mail transportation services is not warranted and that if such an exception is found necessary or desirable amendatory legislation should be obtained.

This brings us to the basic problem before us, and the problem we believe the President meant to deal with in his legislative recommendations. Briefly stated, it is the need under today's transportation conditions for change in postal statutes in line with these changed conditions, which have been crippling postal transportation increasingly in recent years. The problem was clearly stated by former Assistant Postmaster General E. George Siedle in testimony before the Post Office and Civil Service Committee in the 85th Congress, as follows:

> A fundamental need to expedite delivery of mail to addressee is freedom to utilize all media of transportation on the most advantageous basis. Hence, an important factor is the extent to which all existing comercial transportation facilities are readily available for mail use on a continuing dependable basis.
>
> The law today guarantees the postal service the continuing availability of the regularly scheduled transport operations by rail, by air, and by steamship. However, this is not true in the case of the rapidly growing common carrier highway operations which have become nationwide in scope.
>
> We should be in position to use these common carriers on an if, when and as-needed basis, but cannot do so under the procedures presently required by statute.

The resulting situation was described by the Department's witness as follows:

> Dealing first with the factor of use, we cannot, for example, make on-the-spot use of a common carrier by motor vehicle even though its schedule is of value in expediting the delivery of mail. We must first, under the law, advertise for bids for the particular service between the points involved and then must award

the contract to the lowest responsible bidder. The involvements in such procedure are obvious.

While the daily services of many common carriers are often scheduled with great frequency and at many different hours throughout the day and thereby could be of great value to us, the service can be obtained only through the advertising-bidding procedure.

No passenger, no shipper of freight is confronted with such a situation. He needs only tender himself as a passenger by rail or by bus, or tender his shipment of freight for transport to and delivery at destination. Nor are other agencies of the Government so limited, for they may ship by common carriers anytime and without advertising for bids.

Now, in the intervening 5 years since Mr. Siedle outlined the needs of the postal transportation service, the daily problems which confront the service in arranging for transportation, have become more and more acute. The Post Office Department is required to be ready to move mail from anywhere to anywhere expeditiously, effectively, and economically.

The Post Office Department told Congress in 1958:

We no longer can accomplish this by rail; the solution is not in adding many thousands of star route operations, for reasons already cited, and the further fact that such operations would not make available the large modern terminals, equipment flexibility dictated by volume, the interchange of equipment by operators, and the coordinated through service regardless of the number of operators involved, which the nationwide transportation of mail requires. The answer, as we see it, is to place the highway transportation counterpart of rail transportation in position to handle mail.

Today the urgency is greater than it was in 1958, so great in fact that the President has taken recognition of it and made it part of his transportation recommendations. We believe the time to consider and take legislative action on this matter is long overdue. We believe the Post Office Department should take the true measure of significant changes in transportation, and should make use of the modern nationwide system of motor common carriers. It is true that more and more mail service is moving on the highways, but it is also true that the movement to highway has in almost every instance been brought about by abandonments of railroad service or other changes outside the Department's control.

On March 20 this year the Postmaster General commented on the Department's transportation problems, and said:

Our main concern is, in every case, to provide the quickest possible means of mail delivery. As you know, the Department has been presented in recent years with difficult scheduling problems due to the infrequency of passenger trains and the fixing of schedules primarily for passenger purposes.

Thirty years ago, we had the use of more than 10,000 mail-carrying trains to assist us in providing timely mail service. Today this number has declined to 1,360. Only 30 percent of our 35,000 post offices are now served by rail, half as many as in 1925.

This radically changed pattern of surface transportation is not a situation to our liking—nor is it of our making.

But it is a reality which we must face when we are now handling 200 million pieces of mail each day, over one for each adult and child in our population (Postmaster General J. Edward Day before the Traffic Club of Washington, D.C., Mar. 20, 1963).

Mr. Chairman, it is not our purpose here to belittle the problems of the Post Office Department, but to offer means to assist in their solution. It is not our purpose either to belittle the accomplishments of the railroads in mail transportation. What we are seeking is the

development of sound public policy in this matter of the transportation of mail as far as we can presently see into the future. We were struck by the conclusions of an ICC examiner after yearlong hearings on "Railroad Passenger Train Deficit" (docket No. 31954), released September 18, 1958.

He predicted the end of railroad passenger service, other than commutation, by 1970 if rail travel continues to decline as it had in the past decade; that is, the period from 1947 to 1957.

> If railroad passenger-miles, other than commutation, continue to decline at the average rate of reduction between 1947 and 1957, the parlor and sleeping car service will have disappeared by 1965 and the coach service by 1957—

He said. This conclusion was reached after extensive testimony by passenger carrying railroads, State regulatory commissions, Government agencies, and freight shippers and receivers.

All the facts we have been able to develop indicate that railroad service useful to the mails is on an accelerated decline, and that it cannot be reversed. The trend is down while the cost is up. The Post Office Department, therefore, finds itself forced to pay more and more tax-produced dollars for less and less rail-mail service with each passing year. (These facts are reflected in table 702, p. 186, Annual Report PMG, 1962.)

We motor common carriers believe that an objective understanding of conditions in transportation leads to the conclusion that major, not minor, changes must take place in postal transportation to further modernize it. Specific legislation to facilitate the modernization we are talking about can be developed with comparative ease. We believe the need is for a basic statute which will permit the Post Office Department to take advantage of modern highway transportation immediately and into the future as far as we can discern it.

It may well be determined that this matter is more properly before the Committee on Post Office and Civil Service, rather than the Commerce Committee. In any event, the regular common carrier conference, speaking for the regular route motor common carrier industry, does not wish to default on any opportunity to impress upon Members of Congress the urgency of the matters under discussion here.

I indicated earlier that we have exerted ourselves over the past 13 years in the effort to alter the longstanding Post Office policy of relying almost entirely upon the railroads for intercity transportation of the mails.

In these years we have gained some special exeprience with the views of the Post Office Department at all levels. We have heard expressed a fear that the Department's transportation charge will be increased by the use of the system services of motor common carriers over those contract highway services they now have. We believe the postal officials are mistakenly comparing the full motor common carrier service with the more limited service of the mail contractor. We believe the Post Office Department, if it makes a comparison, should compare the potential service we can perform as system carriers to the service that is performed by other system carriers. The plain fact is that the Post Office Department has no experience with the use of motor common carriers as system carriers, but continues to use these

carriers as mail contractors. However, it should be said that the experience with regulated common carriers has been good where the Department has entered into contracts with such carriers.

In emergency situations wherein motor common carriers have been called upon to transport U.S. mail they have responded quickly and have provided excellent service. For example, on Friday, August 19, 1960, Mr. Sam Mikolajcik, transportation planning and procurement officer, Philadelphia region, Post Office Department, began developing emergency mail transport plans with a common carrier industry representative, Mr. Herbert E. Ruprecht, manager, mail route division, Modern Transfer Co., Inc., Allentown, Pa.

On August 25 the carriers met with the Post Office committee to be prepared for emergency service, if, as then anticipated, employees of the Pennslyvania Railroad Co. should go on strike at midnight, September 1, 1960.

Eight truck mail routes were set up in the area extending from New York City to Philadelphia and Washington, D.C., and including such important centers as Newark, N.J.; Baltimore, Md.; Pittsburgh and Harrisburg, Pa. The Pennsylvania Railroad then provided the only regular surface mail line between New York City and Washington, D.C.

On August 29, the Department advised the carrier representative that the possibility of averting the strike was remote, and asked the carriers to take over the mail movement beginning at noon, August 31. The common carriers involved, on 48 hours' notice, set up "Operation Diversion" to transport U.S. mail over designated routes in the Philadelphia region. The schedules called for a total of 66 round trips requiring 132 tractor-trailers daily, plus additional equipment for unscheduled extra trips as needed.

On October 18, 1960, commenting on the emergency service provided by the carriers, Assistant Postmaster General George M. Moore, said:

> During the strike on the Pennsylvania Railroad recently, we had to find substitute service for a tremendous volume of mainline mail between New York-Pittsburgh-Chicago and St. Louis, and between New York and Washington. A sizable volume of all classes of mail, approximately 25,000 tons, was moved by highway, and almost without exception motor common carriers performed this service because they were the only motor carriers with the facilities and equipment needed to fill the gap. We were highly pleased with the way the motor carriers performed the emergency service.

For more than 10 years the company which I represent has transported mail between Portland, Oreg., and Seattle, Wash., serving numerous intermediate cities and towns. These schedules provide fast, safe, consistent service direct from the shipping platforms of the originating post offices to the receiving platforms of the destination post offices. Additional schedules are operated as required by increased volume. Prior to the inauguration of the motor carrier operation, rail service had been reduced to three schedules per day in each direction and further reduction was in prospect.

My company also transports mail between Seattle, Wash., and Fairbanks and Anchorage, Alaska. This service, which has been in effect for approximately 2 years is provided under some of the worst operating conditions to be found anywhere in this country, from the stand-

point of condition of highways traveled, terrain covered and weather conditions encountered.

Despite these adverse conditions, the mail moves on a 96-hour schedule between Seattle and Anchorage and between Seattle and Fairbanks. This is approximately half the time which was required under the previous method of transportation. During the year 1962 more than 18 million pounds of mail was moved over these routes.

The Alaska service is somewhat unique in that the mail moves on a per pound rate and is intermingled, in the highway trailers, with other commodities. However, mail is given first priority.

Many motor common carriers throughout the country are qualified to provide similar dependable service to the Post Office Department if the way were open for them to do so.

To summarize, postal transportation, we believe, requires the full service flexibility of highway transportation to give the ultimate in service to mail users today. We are living in the Expressway Era of transportation. Since U.S. surface mail is 100-percent truck transportable, the Post Office Department should enjoy the same freedom of selection that all other shippers of the Nation enjoy—that is, the right to use motor common carrier system services. Present statutes do not give the Department that right, hence the need for change.

We believe that sound public policy requires the Post Office Department to begin now in earnest the adaptation of its transportation practices to the intercity transportation of today and tomorrow.

The new concept of land transport is the Interstate and Defense Highway System—now already one-third complete. Its 41,000 miles of interstate expressways will carry 20 percent of all truck traffic. This mileage added to improvements on other primary roads will carry 20 percent of all truck traffic. This mileage added to improvements on other primary roads will give the Nation 59,000 miles of ultramodern highway—divided lanes, long curves, easy grades, and no intersections. Congress in its wisdom, by enacting the Federal Highway Act of 1956, certainly intended that our postal system and the people it serves benefit from this highway network. In order for the public to benefit from improved mail transport, new statutes must be enacted, and they should enable public, regulated motor carriers to transport mail.

There is, of course, no gain in waiting for the completed interstate highways. Motor common carriers today serve virtually every town, city, and hamlet in the Nation, and many thousands of cities enjoy the service of no other mode of transportation.

They maintain terminals, pickup and delivery equipment and trained personnel at principal towns and cities. They operate daily service, some carriers offering hourly departures throughout the day, and hence there is an abundance of service available. Schedules can be arranged at any hour of the day or night to fit the pulse of mail dispatches.

Common carriers have invested hundreds of millions of dollars in terminals, and in tractor and trailer equipment, and are daily transporting all types of commodities including many of extremely high value. They are prepared to transport mail in straight truckload of less-than-truckload quantities under conditions prescribed by the Post Office Department.

Our motor common carrier system of transportation is peculiarly adaptable to the needs of shippers and receivers of general commodities, and should be made available to the postal patrons whose commodity—U.S. mail—is an essential commodity in the life and commerce of the Nation.

Mr. Chairman, I would be pleased to answer any questions within my ability. This concludes my testimony.

The CHAIRMAN. Thank you, Mr. Fraley.

Mr. Younger, do you have any questions?

Mr. YOUNGER. Yes.

Mr. Fraley, is the provision on page 17 in H.R. 4701 satisfactory? Does it answer what you have in mind and what you are advocating?

Mr. FRALEY. We do not think it does, Mr. Younger.

This is the provision which I think would permit negotiation for transportation of mail in lieu of the present arrangement for bidding.

We do not think this gives the kind of flexibility and freedom to the Post Office Department that would enable them to make maximum use of our services.

Mr. YOUNGER. Do you think it all ought to be by open, advertised bids or by negotiation?

Mr. FRALEY. I do not think it should be either, Mr. Younger. I think that the Post Office Department should be free to use motor common carrier services on the same basis that the Defense Department is, for example. The Defense Department, of course, uses motor carrier every day; so does GSA; so do other agencies of the Government.

In fact, every agency with the exception of the Postal Service.

Mr. YOUNGER. That is what I thought this provision makes possible, so the Postmaster General, the same as the head of any agency or such persons as he may designate may negotiate provisions, prices of contracts, agreements, or other instruments for the purpose of securing transportation, including the case of the Postmaster General, for mail transportation services performed by common carriers, by motor vehicles when the services required can be procured from any common carrier lawfully operating in the territory where such services are to be performed and services accessorial thereto for the United States without regard for the provisions of any law requiring the advertising for bids.

Mr. FRALEY. That is true, and I am familiar with that language. The Defense Department, for example; GSA, for example; can and do negotiate with motor carriers for rates on transportation. They need not negotiate for the service, because the service is there and it is available to them at presently published rates, for that matter.

If they have a need which arises quickly, they can avail themselves of the motor carrier service at the then existing rates without any negotiation whatever. They are just in the same position as any commercial shipper and can use the service to the same extent.

As I say, these agencies can and do negotiate special rates under section 22 arrangements. But to the extent that the Post Office Department is not free to just offer the mail to a carrier at the then existing rates or at rates which might be developed in the same way that rates are developed on any traffic, they do not have that freedom.

Mr. YOUNGER. Well, will you provide a change that you think would accomplish the purpose for the Postmaster General?

You make no recommendations here as to how to solve the problem that you spent considerable time on.

Mr. FRALEY. This is correct to this extent, Mr. Younger: We thought perhaps it might be presumptuous for us to offer specific legislation in lieu of this provision; however, we have drafted a bill which we think would do the job and I have a copy of that bill here. We would be glad to make it available to the committee for your consideration.

This bill would then open the thing up completely to the Post Office Department on the same basis, as I say, and I am repeating myself, that it is available to the other agencies of the Government.

Mr. YOUNGER. Otherwise, you have no suggestions in regard to the bill?

Mr. FRALEY. We think that to the extent the bill proposes change, we are in agreement with it. We think the change should be a little more drastic, or a little more radical, a little greater than is suggested.

Mr. YOUNGER. I mean the other features of the bill, other than this one feature. The rest of H.R. 4701 is satisfactory?

Mr. FRALEY. This is all I am interested in.

Mr. YOUNGER. Thank you, Mr. Chairman.

The CHAIRMAN. What you are saying is that you think that the Postmaster General should be required to use the common carriers in transportation of mail where it is available?

Mr. FRALEY. I did not really go that far, I do not believe, Mr. Chairman.

We would be happy if he were required, but we have been thinking more in terms of his being permitted or being enabled to use the service as he saw the need for that service.

The CHAIRMAN. Well, he can make a contract, negotiate a contract with a common carrier as well as a contract carrier or a noncarrier, if he wants to, today.

Mr. FRALEY. Under a bid arrangement, that is true.

The CHAIRMAN. Yes.

Thank you very much. We appreciate your testimony.

Mr. Harry M. Mack.

Mr. Mack, I believe you are the chairman of the board of trustees, Ohio Valley Improvement Association.

STATEMENT OF HARRY M. MACK, CHAIRMAN OF THE BOARD, OHIO VALLEY IMPROVEMENT ASSOCIATION, INC.

Mr. MACK. I am, Mr. Chairman.

The CHAIRMAN. I understand you desire to file a statement.

Mr. MACK. I have already given a prepared statement to the clerk. I just want to make a very brief statement.

I will not burden the chairman or the committee with repetitious testimony.

But I would like to impress upon this committee that the Ohio Valley, in the past 12 years, has attracted some $18 billion in capital investment in that valley and there has been a fantastic development

of industry. All of that has been the result primarily of the present national policy on transportation.

It is the opinion of the Ohio Valley Improvement Association that this fantastic development will continue under the present transportation policy. We strongly urge that this Congress take no action which would change that policy.

I feel that the statement I have prepared fully outlines our position, but much of it is repetitious of testimony that has already been given and further testimony that will be given.

I am fully appreciative of your courtesy in giving me this opportunity to make this statement.

The CHAIRMAN. Mr. Mack, your statement will be included in the record, along with the tables and so forth that you have with it.

Mr. MACK. Thank you very much.

(The complete prepared statement of Harry M. Mack is as follows:)

STATEMENT OF HARRY M. MACK, CHAIRMAN OF THE BOARD, OHIO VALLEY IMPROVEMENT ASSOCIATION, INC.

My name is Harry M. Mack. I am a resident of Cincinnati, Ohio. I am chairman of the board of trustees of the Ohio Valley Improvement Association, Inc., an organization of industrial, business, civic, transportation, and financial agencies that has promoted the development of the Ohio River Valley since 1895. The association is a corporation, not for profit, organized under the laws of Ohio. It is primarily concerned with the orderly development of navigation facilities, flood control, and water resources of the Ohio Valley. Its affairs and policies are directed by a board of 21 trustees, elected by the membership, all of whome serve without pay. I am appearing today for that organization. The statement of aims and objectives which follows is quoted from the organization's articles of incorporation:

"* * * to foster and promote the commercial, industrial, and social development of the Ohio River Valley; to advocate the conservation, control, purification, development, and use of the water resources of the Ohio River Valley and of the Nation; to assemble and disseminate information concerning the Ohio River Valley and all other river valleys in the Nation which will tend to influence action for further permanent improvement of navigation; to preserve constructive competition in the field of transportation; to facilitate intelligent discussion of and concerted action upon matters of public concern in these fields; to do and perform all acts and things necessary and proper for carrying out the purpose of the corporation."

The Ohio River Valley is an inland empire comprising a substantial portion of nine States and a small portion of five more States, having a combined valley population of aproximately 20 million people, with a land area of 204,000 square miles.

The vast industrial development of this region has been dramatically brought to the attention of the American people through various recent publications of national distribution. I refer to such periodicals as Fortune magazine, Wall Street Journal, Time magazine, U.S. Naval Institute Proceedings and Maritime Reporter. Other publications calling attention to the phenomenal development of the Ohio Valley have included New York Times, Business Week, U.S. News & World Report, and official bulletins of the Federal Reserve bank.

IMPACT OF VALLEY GROWTH

Industrial development in the Ohio Valley has attracted almost $18 billion of new capital investment since 1950. It means thousands of jobs, millions of dollars in wages and dividends, and a great flow of taxes on all these things, going back into the Federal Treasury. It means tons and tons of traffic.

The Ohio Valley is composed of great river basins. The system includes the Green, the Cumberland, the Wabash, the Licking, the Barren, the Muskingum, the Kanawha, the Allegheny, and the Monongahela, and many others. The rivers of the Ohio Valley guided its development in the early days. Modern uses of water make it our most precious mineral. Every one of these valleys defines

some important complex of our civilization. There are areas of great industry, areas of farming, and areas of recreation.

WHY IS THE VALLEY SO ATTRACTIVE?

It would be difficult to take any one of these great tributaries and forecast its service to humanity during the next 10 years. But we can get some inkling of the future from what happened in recent years along the Ohio. What did the river have to do with this growth? Many factors contributed, but most of them stem from the waterway itself. Low-cost water transportation, that has influenced all forms of transit rates, is first. Second, is a growing concentration of low-cost power. Third, is an adequate supply of water of improving quality. The fourth factor is low-cost fuel—coal, petroleum, and gas. There are other factors, but these are impressive. Navigation facilities designed for 13 million tons carried 22 million tons in the year of dedication (1929) and 81.6 million tons in 1957. This is more than the tonnage of the Panama Canal and more ton-miles than the Soo, the Suez, and Panama combined.

The statistics indicate that the industrial expansion of the Ohio Valley within the past 12 years has been approximately $18 billion. A fundamental factor in this huge development has been favorable transportation of all kinds, including railways, inland waterways, pipelines, highways, and airlines. Other factors naturally include available water supplies, natural resources, inland security, sound labor, centers of distribution, and a vigorous economy. As the result of a stabilized economy that has been developing in the Ohio Valley for the past century, the region is now the industrial heartthrob of the Nation. Under this well-adjusted economic situation, the valley is carrying a substantial portion of the national tax burden. It is also the very center of national defense.

Actual and announced capital expenditures in the Ohio Valley area, 1950–61, are shown in the following summary, by States, followed by categories of industry, used in assembling the study. This data was collected by graduate students of the Harvard School of Business during the summers of 1957, 1959, and 1961. The data is believed to be reasonably accurate.

Actual and announced capital expenditures, Ohio Valley area, 1950–61—Summary by States

[In thousands]

State	1960–61 survey	1958–59 survey	1950–57 survey	Total 1950–61
Alabama	$198,300	$212,500	$852,600	$1,263,400
Illinois	20,000	0	212,700	232,700
Indiana	97,600	39,500	577,500	714,600
Kentucky	504,200	274,500	2,369,700	3,148,400
Ohio	373,800	307,800	2,721,500	3,403,100
Pennsylvania	737,600	755,200	2,832,000	4,324,800
Tennessee	348,600	280,900	1,303,500	1,933,000
West Virginia	317,400	278,500	1,481,100	2,077,000
Survey area	123,600	463,600	0	587,200
Total	2,721,100	2,612,500	12,350,600	17,684,200

NOTE.—The survey of this expansion was limited to a belt 1 county wide on both sides of the river and only to installations larger than $1,000,000.

Totals by industry

[In thousands]

	1960–61 survey	Total 1950–61		1960–61 survey	Total 1950–61
Food and kindred products	$21,700	$122,600	Iron and steel manufacture	$631,900	$2,985,600
Communications	129,500	736,200	Metal fabricators	12,500	355,700
Tobacco manufacture	0	32,300	Nonferrous metals	59,900	704,900
Transportation facilities	35,200	478,800	Machinery, except electrical	9,200	70,200
Textile and mill products	1,000	12,300	Research center	6,100	109,000
Apparel and related products	3,600	12,400	Electrical machinery	18,000	39,100
Atomic energy operation	50,300	2,320,800	Transportation equipment	3,000	401,700
Lumber and wood products	4,500	11,900	Instruments and related products	8,500	126,100
Electric generating plants	728,200	3,979,800	Miscellaneous manufacture, including ordnance	51,600	451,100
Furniture and fixtures	2,000	5,400	Administrative and auxiliary offices and warehouses	5,300	33,000
Pulp, paper, and products	9,500	228,600	Appliances	12,000	348,700
Printing and publishing	6,000	34,300	Gas and electric utilities	382,600	1,410,800
Chemicals and products	307,000	1,851,400	Oil and gas pipelines	7,600	53,300
Petroleum products	18,900	110,100			
Coal products	32,500	330,700			
Rubber products	21,500	44,000			
Leather and leather products	2,500	21,000			
Stone, clay, and glass products	139,000	262,400	Total	2,721,100	17,684,200

Various attempts are being made to tamper with this economy and several of these relate to its vital transportation services by rail, water, motor vehicle, pipeline, and air, affording a wide range of choice to shippers to satisfy their needs for adequate efficient transportation at the lowest possible rates. This system developed and operated under existing national policy, has been a major factor in the vast Ohio Valley industrial expansion. Basic regional and competitive relationships have become established in a delicately balanced and closely integrated mechanism. The proposals contained in H.R. 4700 and H.R. 4701 and S. 1061 and S. 1062 would disturb and disrupt some of these basic relationships in the field of transportation. Proposals of the type embodied in these bills have been considered by the membership of this association. At an annual meeting of the association, held in Cincinnati, Ohio, on October 11, 1962, the following statement of policy with respect to these matters was unanimously adopted by the membership:

"The availability of low-cost water transportation is a result not only of improved waterways and technical improvements in water carrier operations, but also of a Federal regulatory policy which recognizes the inherent advantages of each mode of transportation and requires that such advantages be protected against destructive competitive practices. Any radical change in Federal regulatory policy tending to shift the balance of competitive forces against the water carriers would deprive the public of the benefits of low-cost water transportation and would in the long run result in increased freight costs. The orderly development and economic progress of the Ohio Valley and the Nation will best be served by continuation of the tested and proven principles of transportation policy embodied in existing law."

The fundamental issues raised by the transportation bills, discussed here, were considered in some detail by Dr. Marvin J. Barloon, professor of economics in the School of Business, Western Reserve University, a consultant for this association, of Cleveland, Ohio. Dr. Barloon's statistics lead only to the conclusion that the main railroads of the Ohio Valley have prospered in important respects to a greater degree than those of the country as a whole, sharing with the rest of the community in the benefits of low-cost barge transportation on the Ohio River. His conclusions are believed by the association to be pertinent to the questions now before this committee and we are attaching copy of Dr. Barloon's tabulation as exhibit A to this statement. When the waterways carry the raw materials, other carriers usually move the finished products.

We respectfully ask the Congress to refrain from any adventure in the uncharted waters of uncertainty that would face the Nation in any drastic disturbance of well-seasoned transportation controls. The Interstate Commerce Commission has established an enviable reputation as an arbiter of many knotty problems.

EXHIBIT A.—*Postwar experience of river valley railroads compared with all other line-haul railroads, United States, 1946–60*

Year	4 Ohio Valley railroads [1]	All other line-haul railroads U.S.A. [3]	4 Mississippi Valley railroads [2]	All other line-haul railroads U.S.A. [3]	8 Ohio and Mississippi Valley railroads	All other line-haul railroads U.S.A. [3]
	(1)	(2)	(3)	(4)	(5)	(6)
1946	81.2	83.6	81.1	83.5	81.2	83.8
1947	77.0	78.4	77.0	78.3	77.0	78.5
1948	76.9	77.2	76.0	77.3	76.6	77.3
1949	80.7	80.2	79.2	80.4	80.2	80.3
1950	74.0	74.5	72.7	74.9	73.5	74.6
1951	74.5	77.7	77.2	77.3	75.5	77.7
1952	74.6	76.2	74.1	76.2	74.5	76.4
1953	74.7	76.4	75.1	76.3	74.9	76.5
1954	77.9	78.8	77.3	78.8	77.7	78.9
1955	73.2	75.8	74.9	75.6	73.8	75.9
1956	73.2	77.3	75.9	76.8	74.2	77.4
1957	74.0	79.0	78.5	78.3	75.6	79.0
1958	74.7	79.4	78.1	78.8	76.0	79.5
1959	75.0	78.8	77.6	78.4	76.0	78.9
1960	76.2	79.9	79.1	79.4	77.3	80.0
INDEXES OF FREIGHT REVENUE						
1946	100.0	100.0	100.0	100.0	100.0	100.0
1947	127.7	120.9	126.2	121.4	127.2	120.4
1948	141.2	137.4	143.5	137.5	142.0	136.9
1949	118.7	122.4	127.8	121.5	121.8	121.9
1950	136.2	135.1	145.5	134.5	139.5	134.2
1951	157.4	148.1	159.0	148.6	157.9	147.2
1952	153.0	151.8	166.0	151.0	157.5	150.6
1953	153.9	154.9	166.1	153.9	158.2	159.9
1954	131.5	135.4	147.2	134.0	136.9	134.4
1955	152.6	147.0	156.0	147.1	153.7	146.3
1956	171.1	152.6	176.8	153.3	173.1	150.5
1957	176.2	151.3	173.0	153.2	175.1	149.5
1958	149.0	138.3	163.0	138.0	153.9	136.2
1959	149.1	143.2	168.5	142.1	155.8	141.0
1960	146.3	137.9	161.9	137.3	151.8	135.9
INDEXES OF TON-MILES OF REVENUE FREIGHT						
1946	100.0	100.0	100.0	100.0	100.0	100.0
1947	119.4	108.9	114.5	110.3	117.8	108.4
1948	114.2	106.6	113.2	107.3	113.9	105.9
1949	85.9	89.5	94.5	88.5	88.6	89.0
1950	99.1	99.5	107.8	98.8	101.9	98.7
1951	114.3	108.3	116.9	108.6	115.2	107.5
1952	103.3	104.0	114.5	103.0	106.9	103.0
1953	99.2	120.9	111.8	101.6	103.2	102.1
1954	87.9	93.7	103.7	92.8	93.0	92.8
1955	109.1	104.7	113.8	104.7	110.6	103.8
1956	120.9	107.3	125.6	108.2	122.4	105.6
1957	121.3	101.4	119.9	103.3	120.8	99.7
1958	98.5	92.2	112.1	91.7	102.8	90.3
1959	97.9	97.1	119.0	95.5	104.6	95.1
1960	98.5	96.4	116.1	95.2	104.1	94.5

[1] 4 Ohio Valley railroads: Baltimore & Ohio; Chesapeake & Ohio; Louisville & Nashville; Norfolk & Western.

[2] 4 Mississippi Valley railroads: Gulf, Mobile & Ohio; Illinois Central; Missouri Pacific; St. Louis-San Francisco.

[3] Col. 2: All line-haul railroads, U.S.A., other than 4 Ohio Valley railroads. Col. 4: All line-haul railroads, U.S.A., other than 4 Mississippi Valley railroads. Col. 6: All line-haul railroads, U.S.A., other than 8 railroads of Ohio and Mississippi Valleys.

Source: Interstate Commerce Commission. Data adjusted for mergers.

The CHAIRMAN. The committee will adjourn until 2:15 this afternoon.

(Whereupon, at 12:25 p.m., the committee recessed, to resume at 2:15 p.m., of the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order.

Mr. B. H. Jones will be our next witness. Mr. Jones, we are very glad to have you. I believe you are the associate secretary-treasurer of the National Livestock Feeders Association.

Mr. JONES. That is correct, Mr. Chairman. May I request that my associate sit with me at the witness table?

The CHAIRMAN. Yes; we are glad to have him do so. You may identify him for the record.

Mr. JONES. His name is Don F. Magdanz, executive secretary-treasurer of the National Livestock Feeders Association.

The CHAIRMAN. You may proceed.

STATEMENT OF B. H. JONES, ASSOCIATE SECRETARY-TREASURER, NATIONAL LIVESTOCK FEEDERS ASSOCIATION

Mr. JONES. Thank you. The National Livestock Feeders Association is a voluntary, nonprofit, nonpolitical organization of persons engaged in the business of feeding and finishing livestock (cattle, hogs, and lambs) for the slaughter market. The association is incorporated under the laws of the State of Nebraska.

The National Livestock Feeders Association actively supports the passage of H.R. 4700, which provides for the exemption of certain carriers from minimum rate regulation in the transportation of agricultural commodities, except for the traditional authority of the Interstate Commerce Commission to deal with matters of discrimination and preference or prejudice.

Interest on the part of National Livestock Feeders Association members in the "minimum rate" bill stems from the use of the railroads to move feeder cattle and lambs to their feedlots and, to a lesser extent, from the transporting of feed cattle, hogs, and sheep to markets and/or to packing plants.

Transportation is one of the large cost items in connection with the growing, feeding, processing, and distributing of meat animal products.

As to the agricultural exemption, Congress, in writing and passing the Interstate Commerce Act, recognized the necessity of including provisions for the exemption of farmers and other agricultural producers from Interstate Commerce Commission regulation in the hauling of their products from farm to market.

This exemption is embodied in clause 6, section 203(b) of the act. Over time, these exemption privileges, in effect, have been extended to commercial motor carriers, including long-distance hauling.

Unfortunately, there has not been a concurrent extension of such nonregulatory privileges to the railroads. This has made it difficult for rail carriers to effectively compete for much of the initial-stage traffic in these commodities.

The present situation is highly discriminatory. The National Livestock Feeders Association submits that there is no basis for claiming fair treatment of carriers under the current regulatory system governing agricultural commodities.

In view of the present competitive situation, we cannot justify the regulation of one mode of transportation with respect to hauling a commodity, or group of commodities, while, at the same time, allowing other types of carriers to operate outside such regulation.

Regulatory enforcement can weigh heavily on one side of the economic scale in the actual determination of what firms or type of transporter can survive, when all carriers are not treated equitably.

Differences in size or volume of operation is no longer justification for preferential regulatory treatment among different types of carriers.

In the opinion of this association, strict regulation exercised by the Interstate Commerce Commission has tied the hands of progressive railroad management.

Regulatory decisions bound by tradition, it would seem, have contributed significantly to the precarious financial condition in which many of the roads find themselves today.

We understand it has been suggested that perhaps it would be more advisable to bring nonregulated traffic, and the carriers thereof, under regulation rather than to provide exemption for those carriers now being regulated.

The National Livestock Feeders Association wishes to call the attention of the committee to the impracticability of such a move.

Attempted regulation of initial-stage movement of agricultural products would be subject to two serious regulatory obstacles:

The problem of clearly defining and separating commercial truckers from "farmer" haulers in determining those to be subjected to regulation; and

The very complex and virtually impossible administrative problem in connection with trying to regulate a multitude of short-haul rates covering an extremely wide range of distances, hauling conditions and arrangements, and size and scope of carriers.

Reduced rates as a result of improved competitive climate: The passage of H.R. 4700 by the Congress would make it possible for shippers of agricultural commodities to reap the benefits resulting from the inherent advantage of low rail cost on volume movement. Our members would anticipate savings, particularly on the long distance runs.

According to U.S. Department of Agriculture estimates, the cost of rail and truck transportation in connection with the marketing of farm food products bought by consumers amounts to around $4.3 billion annually, or approximately 10.5 percent of the total marketing bill.

This figure is conservative because it does not include local hauling, or charges for intercity transportation by water and air.

It can readily be seen that any decrease in such costs is important to consumers as well.

Protection of the public interest, the interest of shippers and of competing carriers: The National Livestock Association wishes to emphasize to the committee that H.R. 4700 provides for the alteration of Interstate Commerce Commission jurisdiction with regard to minimum rate levels only.

The traditional power of the Interstate Commerce Commission to deal with matters of unjust discrimination, undue preference, preju-

dice, advantage, and so forth, as provided for in sections 2 and 3 of the Interstate Commerce Act, would be unaffected by these bills. In fact, specific reference is made to the retention of said authority in the bill under consideration.

This reference is on page 3, lines 2 to 6, and similar provisions are on page 6, lines 12 to 16, and page 8, lines 13 to 17.

Quoting from the bill:

* * * The Commission, however, shall retain all currently effective authority and power to determine that such a rate, fare, or charge is in violation of applicable provisions against unjust discrimination, or undue or unreasonable preference or advantage * * *.

H.R. 4700 is specific, also, with reference to the application of appropriate antitrust provisions.

This reference is page 3, lines 9 through 21, and similar provisions also on page 6, lines 19 through 7 on page 7, and page 8, lines 20 through 6 on page 9.

Quoting directly from the bill:

* * * If any carrier or carriers exempted by the provisions of this paragraph from minimum rate regulation shall engage in any act, practice, or conduct or be a party to any arrangement, contract, combination, or conspiracy with respect to any rate, charge, or fare for transportation of any commodity referred to in this paragraph, or of passengers, in violation of the provisions of the antitrust laws, as designated in section 1 of the act of October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes", such carrier or carriers shall be subject to the proceedings and penalties specified in such laws and all amendments thereto with respect to such violations * * *.

The authority of the Interstate Commerce Commission to act in accordance with the foregoing statutory provisions would provide, in our judgment, sufficient protection of the public interest, the interest of shippers, and of competing carriers.

In connection with enforcement of antitrust provisions, the legislation under consideration also provides:

This reference is on page 3, lines 22 through 4 on page 4, and similar provisions also on page 7, lines 7 through 15, and page 9, lines 7 through 13.

Quoting from the bill:

* * * *Provided*, That nothing contained in this section shall be construed to prohibit a common carrier from establishing, in accordance with the provisions of section 5a of the Interstate Commerce Act, reasonable through routes with other such carriers, or from considering, initiating, or establishing jointly with other such carriers the rates, fares, classifications, divisions, allowances, or charges applicable solely to such reasonable through routes. * * *

The National Livestock Feeders Association wishes to record its support for the continuation of the privilege to establish through routes and rates by using the joint procedure described herein.

In addition, we urge such amendment to H.R. 4700 as is necessary to preserve the conference procedure of ratemaking, which provides shippers the privilege to participate.

In conclusion, in the interest of not burdening this committee with repetitious testimony, figures and other technical data with respect to costs, and the like, have not been included in this statement.

Such information should logically be presented by those parties, namely, the carriers themselves, who are directly involved with transportation operations.

The National Livestock Feeders Association respectfully urges the committee to act favorably on H.R. 4700.

The CHAIRMAN. Does that conclude your statement, Mr. Jones?

Mr. JONES. Yes, Mr. Chairman.

The CHAIRMAN. Do you have any further statement by your association?

Mr. JONES. No, sir, unless there are some questions.

The CHAIRMAN. Are there any questions by members of the committee? If not, thank you very much. We are glad to have had your statement on this important subject.

Mr. JONES. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Robert J. Corber.

STATEMENT OF ROBERT J. CORBER, COUNSEL, NATIONAL ASSOCIATION OF MOTOR BUS OWNERS; ACCOMPANIED BY W. G. HUMPHREY, TRAFFIC MANAGER, CAROLINA COACH CO.; AND ROBERT F. THOMPSON, THE NATIONAL ASSOCIATION OF MOTOR BUS OWNERS

Mr. CORBER. Mr. Chairman, my appearance here is on behalf of the National Association of Motor Bus Owners. We will have three witnesses who have been scheduled for today and their testimony has all been prepared as a package or as a unit.

I would like to request that the three statements be presented and that the questioning be based upon the three statements as a package if that would be agreeable with the committee, sir.

The CHAIRMAN. Is that Mr. R. F. Thompson and Mr. W. G. Humphrey?

Mr. CORBER. Yes, sir. That is correct.

The CHAIRMAN. Let them come around, then.

I believe Mr. Thompson is president of the Vermont Transit Company, Inc., and Mr. Humphrey is traffic manager of the Carolina Coach Co. at Raleigh, N.C.

Mr. CORBER. That is correct, sir.

The CHAIRMAN. You gentlemen may proceed, then, with the panel presentation, if that is what you want.

Mr. CORBER. If permitted, sir, yes.

Mr. Chairman, my name is Robert J. Corber. I am appearing as counsel for the National Association of Motor Bus Owners.

During the last session of the Congress, I testified before your committee on behalf of NAMBO in regard to H.R. 11583 and H.R. 11584, the predecessors to the bills you are presently considering.

Since I understand that the record of last year will be incorporated by reference into this record, I shall not repeat last year's testimony.

Our appearance today is designed to supplement the prior record with the statements of persons engaged in actual operations.

Thus Mr. W. Glenn Humphrey, traffic manager of Carolina Coach Co., and Mr. Robert F. Thompson, president of Vermont Transit Co., Inc. will present statements.

Before they testify I should like to make some general observations by way of background. I shall be brief.

NAMBO is in full accord with the objective of this legislation to create a regulatory climate in which a strong, dynamic public transport system capable of providing safe transportation at low cost to the public can be developed.

Some of the provisions of the bills would not, in our judgment, serve this objective. The provisions of section 1 (a) and (b) of H.R. 4700 to modify the exemption from the antitrust laws, as presently contained in section 5a of the act, is in this category.

Mr. Humphrey will devote his testimony to that subject. A similarly undesirable proposal is the one in section 1 of H.R. 4700 to remove the power of the Interstate Commerce Commission to prescribe minimum reasonable fares for passenger transportation. Mr. Thompson will cover that proposal.

Section 6 of H.R. 4701 would extend that civil forfeiture provisions of the act to violations of safety regulations.

I testified last year that the intercity bus industry opposes the application of civil forfeitures to minor safety violations and believes this proposal should not be extended to the bus industry which enjoys an exceptionally good safety record.

Our detailed reasons for this position are in my testimony of last year.

We are also opposed to the provisions of section 9 of H.R. 4701 insofar as it would authorize negotiated contracts with the Government for the transportation of traffic other than mail. My testimony of last year gives a full explanation of our position in this regard.

We support section 5 of H.R. 4701 which would clarify the authority of the Interstate Commerce Commission to make cooperative agreements with the States for enforcement of economic and safety requirements of law.

We further support proposals for greater use of commercial facilities by the Government and for encouragement of through routes and joint rates among the several modes of carriers.

Other provisions of these bills do not directly affect the bus industry and we are taking no position on them.

As an introduction to Mr. Humphrey's statement I would like to recall to you some of the legislative history of section 5a of the act, popularly named the Reed-Bulwinkle Act.

Attached to my statement is an appendix containing an excerpt from the Report of the Senate Interstate and Foreign Commerce Committee on the bill ultimately enacted as section 5a.

It shows that section 5a was designed to authorize a broad range of joint activities by carriers in addition to joint rate activites.

There was a demonstrated need for joint action on exchanges of equipment, maintenance services by one carrier for another, accounting practices, handling of loss and damage claims, tariff composition and publication, operating standards and others, plus rate matters.

This need exists in the bus industry today, as Mr. Humphrey will point out, just as it did in 1948 when the Reed-Bulwinkle Act was adopted.

If joint activities are limited to rates on through routes, as proposed in this legislation, most of the joint arrangements between passenger bus carriers would be jeopardized or eliminated altogether.

It was recognized in the consideration of the Reed-Bulwinkle Act that these joint arrangements for other than rates on through routes are required by the needs of commerce.

It was further recognized in Reed-Bulwinkle that the need for joint consideration of rates cannot be limited to joint through routes. Thus, the Senate committee reported that:

> The necessity for joint consideration of rates in order to meet the requirements of the act is by no means confined to joint rates, and in the case of a particular joint rate by no means confined to the carriers participating, or proposing to participate, in that one rate.
>
> The rates which together make up a rate structure necessary to satisfy both the standards prescribed by law and the legitimate requirements of commerce are interrelated and interdependent to an extent not generally appreciated by those who are not called upon to deal with them (S. Rpt. 44, 80th Cong., 1st sess., Mar. 3, 1947).

These conclusions are applicable to the bus industry today as fully as they were when published.

In conclusion, Mr. Chairman, I should like to add that it appears to us that this legislation attempts incorrectly to apply a principle of a free market economy to a regulated industry.

Bus companies are regulated as to business entry, tariff publication, and the like by the 48 States in the Continental United States, the District of Columbia, and the Interstate Commerce Commission.

The result of this regulation is that these carriers are not able to respond to competitors' price behavior in the way that could, for example, happen in the oil industry of the United States.

There would necessarily be a timelag between a fare cut by one bus company and an equal fare cut by its competitors.

The same can be true of schedules which are regulated by many State commissions. Intrastate operators who must look to State regulatory requirements face restraints not applied to interstate operators.

As a consequence, it is easy for one carrier to obtain a temporary competitive advantage if there is not joint consideration of activities by industry members.

We think this is the major distinction between this industry and such industries as oil, steel, and others.

Thank you very much, Mr. Chairman, and if permissible, I would like Mr. Humphrey now to present his statement.

The CHAIRMAN. Very well.

Mr. HUMPHREY. My name is Glenn Humphrey. I am traffic manager for Carolina Coach Co., Raleigh, N.C., a position I have held for 34 years. Carolina Coach Co. is a member of the National Association of Motor Bus Owners. My appearance today is on behalf of NAMBO.

NAMBO is the national trade association for the intercity motor bus industry. It serves as spokesman for nearly 1,000 carriers. These account for about three-fourths of the intercity motor bus transportation in the United States.

The members of NAMBO are both large and small and they are found in every part of the country. They serve all the major cities in the United States.

A large part of their operations are devoted to furnishing the only means of public passenger transportation in the thousands of small

communities which, for economic reasons, the railroads and airlines do not serve.

They serve more communities and haul more passengers than rail and air carriers combined. Their service includes small package express and pouch mail operations as well as passenger transportation.

My testimony relates to the proposed partial removal of the antitrust exemption provided by the so-called Reed-Bulwinkle Act (section 5a of the Interstate Commerce Act).

The proposed revision would leave the exemption for initiation, consideration, and publication of joint through service fares. It would remove the exemption for other joint fair activities related to the passenger service.

This proposal would leave the way open for destructive fare-cutting, increase administrative costs, cause confusion in tariff publication, and set the industry back many years.

Joint fare activities are handled for the intercity bus industry by the National Bus Traffic Association. I am a director of that association and familiar with its operations.

Approving the association agreement under section 5a of the act, the Interstate Commerce Commission described its functions as follows:

> Its primary functions are to provide means for the consideration, initiation, and establishment of joint fares, rates, and charges, and rules and regulations pertaining thereto.
>
> Under appropriate powers of attorney it acts as a publishing agent for some 750 carriers, including its members, in the preparation and filing with this Commission and State regulatory bodies and the distribution of joint tariffs containing such rates and fares.
>
> In addition, it disseminates information with respect to efficiency and economy of operations or improvement of service, represents carriers in administrative or judicial proceedings, assists members in advocating desired legislation, and rules and regulations governing the issuance and publication of tariffs and time schedules (National Bus Traffic Association, Inc.—Agreement. 278 ICC 147 at 148 (1950)).

The Commission further pointed out that the Traffic Association maintains four standing committees which deal with (1) uniform tariffs, (2) uniform schedules, (3) finance and auditing, and (4) baggage.

Although these committees do not become involved in the consideration, initiation, or establishment of rates, fares, or charges they are important and integral parts of the rate functions of the association.

As a consequence, impairment of the purely rate functions of the association could damage, at the same time, the other activities in which it is engaged.

I should like to specifically identify the activities of the association which would be eliminated or, at the very least, jeopardized by the proposed revisions in the section 5a exemption:

1. *National Bus Military Bureau.*—This is a division of the National Bus Traffic Association. It negotiates agreements each year with the Defense Department for the transportation by bus of Armed Forces personnel.

These negotiations are carried out on behalf of the intercity bus industry.

The current agreement is named Joint Bus Military Agreement No. 7 and provides for a 5-percent discount below regular tariff rates for military personnel. The agreement relates to single-line fares as well as joint interline fares.

This bureau also arranges for a representative of the industry to service each of the thousands of military installations in the country which receive bus transportation under the agreement.

It charges dues to its members to cover the costs of operation and these are based on the revenues earned by the carriers from military traffic.

The liaison function is performed by industry representatives at military installations without cost to the Department of Defense and is indispensable in expediting the movement of military personnel. It would be of paramount importance in an emergency.

A similar agreement is negotiated on behalf of the intercity bus industry by this Bureau with the Director of Selective Service.

It is called the Selectee Passenger Agreement No. 2. This agreement covers the movement of selectees between their homes and the examining stations and from their homes to induction stations. The fares relate to single-line fares as well as joint interline fares. Incidentally, the buslines transport 90 percent or more of all selectee traffic.

The Bureau would no longer be able to negotiate either of these agreements if this legislation becomes law. The result would be that hundreds of bus operators would be required to enter into direct negotiations with the Government for the transportation of military and selective service personnel.

There would be administrative chaos for both the Government and the carriers with cost increases which would impair the ability of the carriers to give fare reductions for the traffic.

2. *Baggage clearinghouse.*—The association maintains a clearinghouse for locating misdirected baggage which serves all member carriers.

The cost of the service is taken out of the dues payments by members of the association. The service is not limited to interline operations and, therefore, would be adversely affected by the proposed legislation.

3. *Accounting clearinghouse.*—NBTA serves as an accounting clearinghouse for services interchanged among member carriers.

These accountings include interline arrangements, but they also cover joint maintenance and fuel exchanges between carriers on single-line movements and on charters.

Although the proposed legislation would not directly affect these activities, it would discourage carrier agreements on any matters not related solely to interline service and, therefore, would impair the effectiveness of clearinghouse functions.

4. *General.*—In addition to its other functions, NBTA provides a group purchase facility which enables carriers to buy drivers' logs, accounting forms, baggage checks, posters, bus bills, and other commonly used items at the reduced costs allowed for volume purchases. This service, which particularly benefits the smaller carriers, would also be adversely affected by the legislation now before the committee.

Aside from the problems mentioned, there would be others if section 5a is limited as proposed for passengers. A good example of the added problems is the situation between Raleigh, N.C., and Washington, D.C. My company, Carolina Coach, operates between Raleigh and Richmond.

Virginia Stage Lines, another National Trailways member, operates between Richmond and Washington. The Greyhound system operates a single-line service from Raleigh to Washington via Richmond.

The Washington passengers we originate at Raleigh move from Richmond to Washington under our interline arrangement with Virginia Stages. Under the proposed legislation we would be able to discuss Raleigh-Washington interline fares with Virginia Stages.

However, we could not discuss Greyhound's fares with it because it has a single-line service between Raleigh and Washington.

At the same time, nevertheless, Greyhound could discuss with Virginia Stages the joint fare between Raleigh and Charlottesville because of interline arrangements to Charlottesville.

Carolina Coach could discuss with Greyhound the joint fare between Raleigh and Bristol for the same reason.

There obviously would be confusion and discrimination under these circumstances. One set of fares would be established by joint action while another set of fares could not be jointly considered.

One group of carriers would be placed in opposition to another group or single carrier. There would almost certainly be adverse competitive consequences in the form of fare cutting or rate wars which would injure the carriers and ultimately the public through loss and impairment of service.

This situation exists all over the United States. In many instances the single-line carrier operating the through service is a small carrier which could not survive a rate war against larger carriers engaged in the interline service.

The intercity bus industry today has the most complete tariff publications ever available to the traveling public. As an example, the Carolina Coach agent at Ocean City, Md., population 983 persons, can issue a ticket at correct fare to Alpine, California, population 397 persons.

There are at least 25,000 establishments throughout the country which are thus equipped to sell a bus ticket to almost any destination in the United States or Canada, whether the trip be 50 or 3,000 miles in length and irrespective of the number of carriers over whose routes the journey is to be performed—often as many as a half dozen or more.

Many of these establishments are small town restaurants, filling stations, drugstores, or travel agencies. Their facilities are becoming even more important as carriers make long-haul—even coast-to-coast—bus transportation available to the small communities these ticket selling agencies serve.

But with their limited facilities they could not handle numerous tariffs published by a multitude of carriers and must, as a practical matter, depend on a single integrated tariff of the kind published by NBTA on behalf of the carriers.

It is my opinion if section 5a is limited as proposed for passengers that the industry's tariff publications cannot be maintained in their present excellent form.

The NBTA also publishes a tariff naming rules, regulations, and charges for chartered bus service. This is issued for practically all intercity bus carriers. Rates published are individual rates and not joint rates.

The limitation of section 5a as proposed would require that each of these several hundred carriers publish an individual carrier coach tariff with the resulting greatly added cost.

Many smaller bus carriers do not have training or knowledge of proper tariff construction or of Commission procedures relating to proper tariff filings. The NBTA compiles, publishes, and files the local tariffs for these carriers. This service would be jeopardized by the proposed legislation.

I have attempted to demonstrate that the joint rate and related activities of NBTA are essential to the stability and uniformity of operations of the intercity bus industry.

These carriers exist in a highly competitive atmosphere. They are exposed to competition from the private automobile as well as other modes of transportation.

The automobile is carrying over 90 percent of all intercity travel. The bus carriers have survived this competition to provide safe and reliable service to thousands of communities—many of which have no other means of public passenger transportation—with steadily lowering fares.

They have been able to achieve their remarkable record as a result, largely, of the economies and internal disciplines brought about by the kind of joint activities for which NBTA exists.

If antitrust exemption for joint rate action is limited to interline arrangements, the competitive forces working on the industry could well lead to fare cutting and instability on single line-fares and many of the joint activities in which the industry necessarily engaged would be jeopardized.

The adverse effects on carriers would lead to reductions and eliminations of schedules with confusion in service, causing inconvenience and loss of service to many persons dependent upon buses for public transportation. For these reasons we earnestly urge your committee to disapprove the proposed revisions in section 5a of the act.

The CHAIRMAN. I believe you wish, Mr. Corber, Mr. Thompson to present his part of his testimony.

Mr. CORBER. Yes, Mr. Chairman.

Mr. THOMPSON. Thank you, Mr. Chairman.

My name is Robert F. Thompson. I am president of Vermont Transit Co., Inc., Burlington, Vt., an intercity bus operator. I am also a director of the National Association of Motor Bus Owners with which I have been associated for 32 years. My appearance is on behalf of NAMBO. The nature of that association and the operations of its members have previously been described to you by other witnesses.

I will not repeat any of the testimony of other NAMBO witnesses except for very brief references to facts that make up essential background for my statement. My remarks are limited to the provisions of H.R. 4700 which would remove the power of the Interstate Com-

merce Commission to prescribe minimum reasonable fares for passenger transportation. This proposal could result in seriously adverse consequences to the intercity bus industry and therefore to the public.

Since the advent of bus operations, the passenger transportation business has been intensely competitive. Besides competition within the industry itself there is strong competition from the private passenger automobile and from other modes of carriers. In 1961 the private automobile accounted for 90 percent of passenger miles in intercity travel. There was also substantial competition from the airlines. In the same year the railroads accounted for 2.6 percent of passenger miles in intercity travel. The buslines also accommodated 2.6 percent of intercity passenger transportation in that year.

This competitive picture will endure as long as the private automobile lasts. Thus the forces at work on passenger fares are headed down, not up. This is demonstrated by the history of passenger fares in the bus industry. Fares averaged 4 to 6 cents per passenger-mile prior to Federal regulation in 1935 and today they average 2.71 cents per passenger-mile despite substantially increased costs. Under these conditions future pressures will increase the need for minimum-fare regulation to prevent destructive price cutting. Removal of regulatory powers will create a vacuum in which the forces of competition can drive fares downward, seriously injuring many bus companies and pushing others out of business. The greatest danger exists on routes between larger communities where other modes of passenger transportation are present. It is the passenger density and revenues from these routes that support operations to thousands of smaller communities where buses supply the only means of public passenger transportation. These smaller communities would be threatened with drastically curtailed or loss of all service if revenues of carriers operating between the larger centers were substantially reduced by unreasonably low rates.

Some proponents of this legislation argue that minimum fare powers are not required because the Interstate Commerce Commission seldom, if ever, prescribes minimum passenger fares. This is fallacious reasoning. The mere existence of the power to prescribe minimum reasonable fares is a deterrent to destructive price cutting.

It is true that the present power has not kept all passenger fares above costs. This is particularly apparent in rail passenger fares. Rail carriers continue to operate passenger schedules with staggering deficits. These are declining as passenger schedules are eliminated but the 1961 rail passenger deficit of $408.2 million shows they are still high.

This is a disturbing situation for bus lines competing with rail carriers. I have attached to my statement an appendix comparing bus and rail fares between representative points in the United States. The appendix shows that despite their losses the rail carriers are publishing fares below bus carrier fares. For example, between Seattle and Yakima, Wash., the Northern Pacific publishes a one-way fare of $3.50 and a round trip fare of $5. The comparable bus fares are $4.20 and $7.60, respectively. Between Los Angeles and San Diego the round-trip rail fare is $4.40 and the comparable bus fare it $5.69.

There are other instances of unduly low rail passenger fares. The Canadian National Railways, Government-owned and heavily Govern-

ment-subsidized, recently instituted passenger fare reductions between Montreal and New York of up to 37 percent. Their losses will be recouped with Government subsidies. The New Haven Railroad has published fares below bus fares in the New England area. Recently the Boston & Maine Railroad has drastically reduced fares between Fitchburg and Boston with the aid of Federal subsidy. Fares were reduced between Ayer and Boston from $1.99 one way to $1.10. The comparable bus fare is $1.65. The Englander Coach Lines which furnishes the bus service between these points has experienced a loss of passengers of well over 10 percent with substantial revenue losses during the period of the reduced rail fares.

These examples will perhaps suffice to demonstrate that even with minimum fare regulatory powers, the competitive situation between bus and rail carriers is less than fair. It would become even worse under the proposed legislation.

There is also danger of destructive price cutting between bus company rivals. Wherever competition is strong price wars can develop overnight and without an umpire standing nearby these situations would continue until one carrier is fiancially destroyed. I recall that prior to Federal regulation bus fares between Boston and New York were slashed as low as $1.50 one way for the 225-mile haul, as a result of cutthroat competition. The fare is now $7.45 one way.

The bus charter business would probably be the first victim of price wars. Competition for charters is extremely intense with many new carriers entering the field without regular route responsibilities. They already are engaging in price cutting and they would certainly step up this practice if the Interstate Commerce Commission's minimum fare authority is eliminated. The importance of charter opportunities to regular route intercity operators is reflected in the fact that in 1961 revenues from this business accounted for 7.9 percent of total revenues for class I carriers. Parenthetically, the percentage for the smaller carriers is an even higher figure.

The total charter revenue of $38,700,000 was only $6,600,000 in excess of the net income after taxes for these carriers. For many carriers serving the smaller communities, charter revenues constitute one-half or more of total revenues. These carriers could not survive a charter rate war with resulting revenue losses. The fact is that many certificated carriers could be put out of business by a loss or substantial diminution of charter revenues.

For the reasons I have stated the removal of minimum fare regulation by the Interstate Commerce Commission would have a seriously injurious effect on intercity bus companies with consequent loss of service and convenience to the traveling public.

We therefore urge the committee not to report favorably on the part of H.R. 4700 which would eliminate ICC authority over minimum fares.

Thank you, Mr. Chairman.

Mr. CORBER. Mr. Chairman, that completes the three statements on behalf of NAMBO.

The CHAIRMAN. Gentlemen, thank you very much.

I observe that you have some additions to your statements. Mr. Thompson has a table appendix to his statement. I assume you would like this to become a part of your statement.

Mr. CORBER. We would, Mr. Chairman, and be included in the record.

The CHAIRMAN. Let these additions be included with the statements.

(The statements referred to follow:)

APPENDIX: WITNESS, THOMPSON

Selected bus-rail passenger fare comparisons

	Regular bus fare		Regular rail fare		Excursion bus fare		Excursion rail fare	
	One way	Round trip	One way	Round trip	One way	Round trip	One way	Round trip
Portland, Oreg-Seattle, Wash.[1]	$3.95	$7.15	$3.70	$4.95				
Seattle, Wash.-Yakima, Wash.[1]	4.20	7.60	3.50	5.00				
Seattle, Wash.-Vancouver, British Columbia [1]	4.05	6.95	3.70	5.50				
Los Angeles-San Diego [2]		5.69		4.40				
Missoula, Mont.-Butte, Mont.[3]	3.80	6.85	2.50	4.00				
Missoula, Mont.-Helena, Mont.[1]	3.80	6.85	2.50	4.00				
Spokane, Wash.-Butte, Mont.[1]	9.85	17.75	8.25	12.50				
Spokane, Wash.-Helena, Mont.[1]	9.85	17.75	8.25	12.50				
Spokane, Wash.-Missoula, Mont.[3]	6.55	11.80	5.75	8.50				
St. Paul, Minn.-Duluth, Minn. [1]	3.95	7.15				$5.70		$5.70
St. Paul, Minn.-Superior, Wis.[1]	4.35	7.85				5.70		5.70
St. Paul, Minn.-Fargo, N. Dak.[1]	6.35	11.45	7.00	12.60	$5.85	9.20		9.20
St. Paul, Minn.-Grand Forks, Nebr.[1]	8.55	15.40	9.12	16.45	7.90	12.00		12.00
San Antonio, Tex.-Laredo, Tex.[4]	4.60	8.30					$4.00	

[1] Greyhound Bus & Great Northern Railway.
[2] Greyhound Bus and Atchison, Topeka & Santa Fe Ry.
[3] Greyhound Bus and Northern Pacific Ry. Co.
[4] Greyhound Bus and Missouri Pacific RR.

APPENDIX: WITNESS, R. J. CORBER

REED-BULWINKLE ACT LEGISLATIVE HISTORY

(S. Rept. No. 44, 80th Cong., 1st sess. to accompany S. 110, Mar. 3, 1947)

"Commissioner Clyde B. Aitchison, testifying for the Commission at the hearings on H.R. 2536, 79th Congress, after explaining at length the necessity for conference and cooperation in the initiation of rates, fares, and charges, and regulations and practices pertaining thereto, added:

"'However, there are other types of conferences, agreements, and organizations which in the public interest should be permitted under proper supervision and regulation. * * * There are conferences and agreements as to the provision of car service, the making of mine ratings, pooling of cars, car interchange; avoidance of wasteful routes, adoption of construction and operating standards and rules; uniform accounting practices; weighing and inspection of freight; payment of loss-and-damage claims; composition and collection of demurrage; uniformity of classification for freight, and rules applicable thereto, such as bills of lading and packing requirements, in addition to the whole field of cooperative rate initiation and maintenance.'

"* * * There must be agreement among the railroads generally upon the rental to be paid by one road for the use of the cars of another, upon rules to govern the basis of compensation to the owning road for one of its cars destroyed on the lines of another; including a fixing of responsibility as between the owning road and the using road for the costs of different types of repairs and fixing the scale of charges to be made against the owning road for repairs for which it is responsible; and upon rules to govern the return of cars to their owners, as well as numerous other related matters. There must also be agreement between the roads fixing responsibility for collecting and accounting for the freight charges on joint shipments and for the settlement and participating in the payment of claims for loss or damage in transit.

"The necessity for joint consideration of rates in order to meet the requirements of the act is by no means confined to joint rates, and in the case of a particular joint rate by no means confined to the carriers participating, or proposing to participate, in that one rate. The rates which together make up a rate structure necessary to satisfy both the standards prescribed by law and the legitimate requirements of commerce are interrelated and interdependent to an extent not generally appreciated by those who are not called upon to deal with them" (report, pp. 8–10).

The CHAIRMAN. Mr. Rogers, do you have any questions?

Mr. ROGERS of Florida. Just one question.

I wondered if you might have had a study made to show how much taxes your bus companies pay in comparison with your rail lines? I realize you have the local tax, and so forth. I wonder if that could be submitted for the record.

Mr. THOMPSON. I am reasonably confident that information is available, sir. I don't have it here.

Mr. ROGERS of Florida. If it can just be submitted for the record. Thank you, Mr. Chairman.

(The information requested follows:)

STEPTOE & JOHNSON,
Washington, D.C., May 9, 1963.

Re National Association of Motor Bus Owners testimony on H.R. 4700 and H.R. 4701.

HON. OREN HARRIS,
Chairman, House Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D.C.

DEAR MR. HARRIS: When NAMBO presented its statements in regard to the captioned legislation it was requested by Congressman Rogers of Florida that information be supplied for the record showing the taxes paid by the intercity bus industry. We at that time submitted a table giving this information through the year 1960. We have brought the table up to date so that it includes the year 1961, the latest date for which information is available. A copy of the updated information is enclosed.

You will observe that in 1961 the class I carriers of the intercity motorbus industry paid a total of $74,135,000 in taxes. The revenues of the industry for the same year aggregated $489,800,000. Thus over 15 percent of revenues were paid in taxes and $32,802,000 of the taxes paid were special use and excise taxes applicable only to highway users, constituting over 6 percent of the revenues for these carriers in 1961. We are informed that class I rail carrier taxes paid in 1961 were 10.8 percent of gross revenues.

It is requested that this letter and the enclosed table be included in the record in response to the request of Congressman Rogers.

Respectfully submitted.

ROBERT J. CORBER,
Counsel for National Association of Motor Bus Owners.

20 516 63 pt 1——33

Taxes paid—Class I carriers

[Amounts shown are in thousands of dollars]

	1948	1953	1954	1955	1956	1957	1958	1959	1960	1961
	All taxes									
Total, all taxes	57,600	59,900	51,660	50,673	54,736	58,241	59,799	68,813	71,276	74,135
Federal taxes	26,300	30,800	24,218	23,082	26,979	29,924	32,408	39,496	40,610	42,378
State and local taxes	31,300	29,100	27,442	27,591	27,757	28,317	27,391	29,317	30,666	31,757
	Operating taxes and licenses									
Total, operating taxes and licenses	38,300	37,500	35,968	36,784	37,784	41,511	38,587	40,090	44,242	46,461
State and local highway-use taxes:[1] Total	24,400	23,100	21,641	21,587	21,508	21,821	20,496	21,085	21,803	22,608
Gasoline, other motor fuel, and oil	10,600	9,100	8,515	8,677	8,986	9,359	8,943	9,080	9,487	9,975
Vehicle licenses and registration fees	11,600	11,100	10,188	9,812	9,101	8,882	7,941	7,924	7,797	7,600
Highway, bridge, tunnel, and ferry tolls[1]	2,200	2,900	2,938	3,098	3,421	3,580	3,612	4,081	4,519	5,033
Federal automotive taxes: Total	5,700	6,100	5,713	6,160	7,026	9,792	8,209	7,355	9,470	10,194
Gasoline, other motor fuel, and oil	2,500	3,500	3,193	3,168	3,966	4,672	4,473	4,795	6,014	6,029
Vehicle licenses and registration fees					158	319	297	317	301	437
Excise on tires, tubes, vehicles, and parts	3,200	2,600	2,520	2,992	2,902	4,801	3,439	2,243	3,155	3,728
Real estate and personal property taxes and other local, State, and Federal taxes: Total	5,200	5,200	5,185	5,447	5,434	5,623	5,740	6,540	6,589	7,007
Real estate and personal property (State and local)	2,500	3,000	3,175	3,485	3,482	3,610	4,012	4,457	4,557	4,712
Other State and local taxes	2,100	1,800	1,755	1,716	1,715	1,686	1,539	1,727	1,660	1,878
Other Federal taxes	600	400	255	246	237	327	189	356	372	417

Social security taxes:										
Total	3,000	3,100	3,429	3,590	3,816	4,275	4,142	5,110	6,380	6,652
Federal	1,600	2,500	3,029	3,185	3,245	3,665	3,488	4,156	5,098	5,250
State	1,400	600	400	405	571	610	654	954	1,282	1,402
	Provision for income taxes									
Total, income taxes	19,300	22,400	15,692	13,889	16,952	16,730	21,212	28,723	27,034	27,674
Federal	18,400	21,800	15,221	13,491	16,471	16,140	20,522	27,629	25,670	26,517
State and local	900	600	471	398	481	590	690	1,094	1,364	1,157

[1] Highway, bridge, tunnel, and ferry tolls, included here under highway-use taxes, are not always so considered inasmuch as they represent tolls levied, in most cases, by quasi-public agencies.

Source: Interstate Commerce Commission ("Statistics of Class I Motor Carriers, and Transport Statistics in the United States") and special NAMBO tabulations; data for excise taxes estimated in part, as are most data for carriers of both property and passengers.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Yes. Thank you, Mr. Chairman.

Mr. Thompson, on page 3 you refer to the reduced fares between Fitchburg and Boston with the aid of Federal subsidy. What do you mean by that?

Mr. THOMPSON. That was done under the mass transit subsidy that was passed by the last Congress, that temporary bill which set up the, well, among others things, it made possible the experiment that was conducted in Detroit to increase streetcar service and in Massachusetts it has been used to subsidize commuter operations. I am not here to talk about commuter operations or the mass transit bill, but in this particular situation it has adversely, and very adversely, affected the revenues of a privately owned intercity busline.

The State of Massachusetts and the Federal Government are together subsidizing this experiment by the Boston & Maine Railroad for a period, I think, of 1 year to the tune of several million dollars, and in return for this the Boston & Maine Railroad has agreed to increase its service and reduce its fares. Now, what happened to the poor busline that runs alongside it, sir, I don't know.

Mr. YOUNGER. They are not included in the so-called mass transportation, in that area?

Mr. THOMPSON. There are some subsidized arrangements with buslines but to the best of my knowledge, sir, and I am not from Massachusetts, these subsidies for buslines are limited to the strictly suburban and commuter and local transit buslines. But the haul from Fitchburg to Boston, 40 miles, is an important segment of the business of Englander Coach Line. I suppose the problem arises from the difficulty of defining when does mass transit cease to become mass transit? How far from the metropolitan city do you have to go before it is an intercity operation not entitled to subsidy?

Mr. YOUNGER. I am just wondering whether they consider only the Boston & Maine Railroad as a part of the mass transit system? Is it an experiment or did they include the buslines also?

Mr. THOMPSON. I am sure this particular busline was not included, sir.

Mr. YOUNGER. Not included.

Now, you mention at the bottom of the page:

> I recall prior to Federal regulation bus fares between Boston and New York were slashed as low as $1.50 one way.

It was all cutthroat competition.

How many bus lines failed during that cutthroat competition?

Mr. THOMPSON. At the peak, sir, and I recall this because it was my introduction to the bus business in 1931; at the peak there were, as I remember, 13 or 14 separate buslines operating between Boston and New York completely free of all regulation. All you had to do was buy a bus and start running, and you probably did not pay cash for the bus. There was one rate war after another and the fares finally got down to $1.50. Now, this created another problem in the fact that nobody could afford to run for any such fare as that without a full load and so nobody ran anytime except 8 o'clock in the morning and midnight when you could get a full load and the rest of the day you could not find a bus on any one of these 13 or 14 lines between Boston and New York.

As to exactly how many failed and how many were eliminated by mergers and purchases, I don't recall. I know that several failed. There are two there today.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Hemphill?

Mr. HEMPHILL. Thank you, Mr. Chairman.

As I understand your composite testimony, you feel that the legislation should be amended to provide that any of the proposed terms should not apply to the transportation of people, baggage; is that right?

Mr. CORBER. That would be correct, yes. Insofar as these two provisions we have concentrated on here are concerned, that is the minimum fare regulatory power of the Commission and the section 5(a) provisions for joint consideration of rates; yes, sir.

Mr. HEMPHILL. But you have no objection to taking the minimum ratemaking powers away from the Interstate Commerce Commission insofar as agricultural and bulk commodities are concerned so long as it does not affect your particular industry?

Mr. CORBER. Frankly, Mr. Congressman, we have not considered those provisions of the bill simply because they did not have a direct impact on the busline, so I am afraid that we could not give you a considered judgment of those provisions.

Mr. HEMPHILL. Well, I got the notion when you said that NAMBO is in full accord with the objective of this legislation to free a regulatory carrier and so on that you endorse those provisions which were not objectionable to you as outlined in your testimony?

Mr. CORBER. We did not intend to convey that impression. My apologies to you for it.

Mr. HEMPHILL. There is no use to apologize.

I would like to ask another question: Do the buses have some exemption from the speeding laws in some way?

Mr. THOMPSON. No, sir.

Mr. HEMPHILL. Well, I just wondered. I have always been passed by a bus, I never passed one. I have never seen one caught by the police and I just wondered if you had some magic that perhaps you could pass on to me if I was ever in a hurry.

Thank you very much, Mr. Chairman.

Mr. THOMPSON. Sir, may I comment on that lest the record indicate that I am concurring in the implication that buses go too fast.

The CHAIRMAN. You are afraid this might become an admission of guilt?

Mr. HEMPHILL. My question was not, Mr. Chairman, to plead guilty or not guilty, I just asked if he had a gimmick that the rest of us did not know about.

Mr. THOMPSON. I tell you this. Our equipment is full of gimmicks required by various regulatory commissions including in the case of my company and many others, a speed governor which makes it impossible for the vehicle to go beyond the predetermined speed, in the case of my operation that is 65 miles an hour, and a little gimmick or a gadget called a tachograph.

The CHAIRMAN. A what?

Mr. THOMPSON. A tachograph, sir, which maintains a written record of the exact length of time it takes a vehicle to travel, the exact speed

at which a vehicle is traveling every hour of the day. I honestly believe that excess speed on the part of buses is more imagined, sir, than real. We are very proud of the fact that we have compiled the finest safety record of any form of transportation, public or private. We have a better safety record than the railroads, the airplanes, and far better than the private automobile.

The CHAIRMAN. Mr. Broyhill?

Mr. BROYHILL. No questions.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Mr. Chairman, I have no questions. I would like simply to take the oppotrunity to welcome a fellow North Carolinian, Mr. Humphrey. It is a pleasure to hear your statement, sir.

The CHAIRMAN. Mr. Hull?

Mr. HULL. I have no questions, Mr. Chairman.

Mr. CORBER. Mr. Chairman, Mr. Rogers asked a question about the taxes that are paid by the bus industry and members of NAMBO. I would like to invite your attention to a publication by NAMBO which carries the title "Bus Facts, 30th Edition." On page 34, sir, of that publication is a table which has the title "Taxes paid, class 1 carriers, (amounts shown in thousands of dollars)." This is a breakdown by classification of taxes paid by these class 1 carriers for the years 1948, 1952, 1953, 1954, on through the year 1960, the latest date for which data are available.

With your permission I would like to leave this for the record as a response to Mr. Rogers' request.

The CHAIRMAN. Be glad to have it for the files, Mr. Corber.

I don't think we want to include a pamphlet of that kind in the record. I will call it to the attention of Mr. Rogers.

The CHAIRMAN. What do you mean class 1? Are you talking about buses?

Mr. CORBER. Yes, sir.

The CHAIRMAN. You have various classes of buses?

Mr. CORBER. Yes, class 1, 2, 3. These are classifications established by the Interstate Commerce Commission. Carriers with gross revenues of $200,000 or more annually are class 1 carriers.

The CHAIRMAN. What is the class 2 carrier?

Mr. CORBER. $75,000 to $200,000 would be the class 2 carriers and those with revenues less than $75,000 would be class 3 carriers, I believe.

I stand corrected, Mr. Chairman. It is $50,000 to $200,000 are the class 2 carriers and $50,000 and below the class 3 carriers.

The CHAIRMAN. The classification referred to in these statements refers to buses?

Mr. CORBER. Yes, sir, that is correct.

The CHAIRMAN. Mr. Hull.

Mr. HULL. Is that broken down as to States and the counties in which they pass through?

Mr. CORBER. It is not broken down in that way. It is broken down by State taxes, Federal taxes, the kind of user taxes which are paid——

Mr. HULL. Individual States?

Mr. CORBER. Not by individual States, sir.

Mr. HULL. I could not speak for them but perhaps taxes are paid in various States.

Mr. CORBER. I doubt if that data is available. I could check.

It would have to be compiled from the individual reports of the class 1 carriers to the Interstate Commerce Commission.

Mr. HULL. As I understand it when the rails pass through certain States and counties they get certain taxes.

Mr. CORBER. And the bus companies, of course, pay local property taxes too, so there are such taxes paid.

Mr. HULL. Well, I am satisfied that they pay taxes. I just wondered as to the States, the amount of taxes the States get from the various lines.

Mr. CORBER. If the committee would like such data for specific States or counties, Mr. Chairman, we would be happy to see if it is available and supply it, if it is.

The CHAIRMAN. If it is available, you may supply it for the record. If you have just a table or a page of that pamphlet you refer to, to comply with the request of Mr. Rogers, it may be included in the record.

Mr. CORBER. Thank you, Mr. Chairman.

The CHAIRMAN. Gentlemen, thank you very much for your appearance and your testimony.

Mr. R. C. Meyer.

Is Mr. Meyer, of the B. & M. Towing Co., here?

Let the record show that Mr. Meyer has been called. A number of people have been inquiring about his testimony. His statement may be included in the record at this point.

(The statement was not submitted for the record.)

The CHAIRMAN. I do not believe we will have time for a further witness this afternoon.

The committee will adjourn until 10 o'clock in the morning.

(Whereupon, at 3:30 p.m., the hearing was recessed, to reconvene at 10 a.m., Thursday, May 9, 1963.)

TRANSPORTATION ACT—1963

THURSDAY, MAY 9, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee), presiding.

The CHAIRMAN. The committee will come to order.

The first witness this morning will be Mr. Giles Morrow, general counsel for the Freight Forwarders Institute.

Mr. Morrow, we are glad to have you. You might identify yourself for the committee and proceed.

STATEMENT OF GILES MORROW, GENERAL COUNSEL, FREIGHT FORWARDERS INSTITUTE

Mr. MORROW. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, my name is Giles Morrow. I appear on behalf of the Freight Forwarders Institute of which I am general counsel. The institute is the National Trade Association for common carrier freight forwarders regulated under part IV of the Interstate Commerce Act and its officers are at 1012 14th Street N.W., Washington, D.C.

Mr. Morris Forgash, chairman of the board of the institute and president of United States Freight Co., had planned to be here and to lead off with the testimony today, but due to some unforeseen circumstances, he is not able to be here.

I think by interpolating just a little here and there as I go through my statement I can cover anything that both of us would have said on this subject, Mr. Chairman.

The CHAIRMAN. We are sorry Mr. Forgash cannot be with us, but I know you can ably represent the institute and the position of your organization.

Mr. MORROW. Thank you, sir.

My statement deals first with H.R. 4701 and I will discuss first section 2, dealing with experiments.

Section 2 of H.R. 4701 states that the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission "are empowered and encouraged to authorize experiments" by and between common carriers, subject to agency supervision.

We are opposed to this section of the bill, not because we oppose experimentation, but because we think experiments should be subject

to the same statutory controls and standards as are applied to all other activities of the carriers.

Under section 2 of the bill the agencies would be required to "control and carefully supervise" experiments, but no statutory standards for such control and supervision are provided.

True, the bill states that nothing in the section shall be deemed to "diminish" existing regulatory powers or to "restrict" existing rights of carriers, but it does not spell out the extent to which, if at all, existing powers and rights are increased. If section 2 confers no new authority it would serve no purpose other than to state a congressional intent that the agencies approve experiments that conform to statutory requirements. If it does substantively modify the statute, we think it is much too vague and uncertain.

As the Commission pointed out in its testimony on the prior bill last year, experiments are continuously being approved where they fall within the framework of the Interstate Commerce Act.

This is as it should be. We do not know what other type of experiment could or should be approved. We do not think that the mere fact that a proposal put forward by a carrier is called experimental should give it any legal standing that it would not otherwise have. Consequently, we urge your committee to disapprove this section of the bill.

I deal next with section 3.

The President's message on transportation of April 5, 1962, recommended legislation to—

> Assure all carriers the right to ship vehicles or containers on the carriers of other branches of the transportation industry at the same rates available to noncarrier shippers.

The purpose of this change was stated to be—

> * * * to put the various carriers in a position of equality with freight forwarders and other shippers in the use of the promising and fast-growing piggyback and related techniques.

Section 3 of H.R. 4701 is designed to carry out the foregoing recommendation.

I will show that the method proposed by the bill for carrying out the recommendation is legally inadequate, and that even if the recommendation itself were sound, which it is not, many additional changes in law would be necessary to accomplish the stated purpose of equality.

The bill proposes to authorize a carrier of one kind to ship its empty or loaded trailers by a carrier of another kind on the basis of rates published for use by shippers. It purports to do this by the expedient of amending the antidiscrimination sections of parts I, II, and III of the act.

This ignores the fact that the basic scheme of the law, and numerous specific provisions thereof, make it unlawful for a motor, rail, or water carrier to use the services of other carriers as shippers.

In Substituted Freight- Service, 232 ICC 683, decided in 1939, the Commission said that for a motor carrier to act as a common carrier by motor vehicle and as a shipper by rail as to the same service is repugnant to the act.

In a comprehensive proceeding involving piggybacking decided in 1954, Movement of Highway Trailers by Rail, 293 ICC 93, the Commission reached the same conclusion.

It has consistently adhered to this finding for 24 years. The repugnancy to the act cannot be cured by a simple amendment to the antidiscrimination sections.

In pointing out other changes in the law that would necessarily have to be considered as an integral part of the proposal made by the bill, I wish to make clear that we do not recommend such changes.

We are strongly opposed to this provision of the bill, but we think the committee ought to know what the recommendation entails.

The bill would amend sections 2, 216(d), and 305(c) of the act so as to provide that common carriers subject to parts I, II, and III of the act (rail, motor, and water) may not unjustly discriminate as to service or rates in the transportation of vehicles or containers tendered by any shipper or carrier, whether or not regulated.

This would set up irreconcilable conflicts in the antidiscrimination statutes. By the Transportation Act of 1940, after careful deliberation, the Congress inserted the following proviso in the antidiscrination sections—3, 216(c), and 305(c):

Provided, however, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

Thus, if section 3 of H.R. 4701 should be enacted the antidiscrimination statutes would contain one proviso saying that such sections do not apply to the traffic of other carriers and another saying that in the case of piggyback traffic they do so apply.

To avoid conflict and confusion, it would seem that some further change in the antidiscrimination sections should be considered. We have no language to suggest in this respect.

The prohibition of section 4 of the act against charging more for a longer than for a shorter haul over the same line or route clearly should apply to motor carriers to the extent that they utilize rail or water service.

That principle is clearly recognized by the Commission in the case of joint rail-motor rates, but section 4 might not apply under circumstances where motor carriers would utilize rail service as shippers and pay published rail rates.

Section 4 will not only be defeated in its purpose, but will create discrimination if it is applied to rail traffic which the railroads themselves solicit, but is not applied to rail traffic moving under overriding motor carrier bills of lading.

Accordingly, in evaluating the merits of section 3 of the bill, your committee should also consider an amendment to section 4(1) of the act.

The amendment should provide that, in addition to the rail and water carriers to which section 4 now applies, it also should apply to—

Part II to the extent that any common carrier subject to such part utilizes, for any part of the transportation which it undertakes to perform, the services or facilities of a railroad or water carrier for the transportation of its vehicles or containers.

Sections 203(a) (13) and (14), which define the terms "motor vehicle" and "common carrier by motor vehicle," respectively, clearly confine motor common carriers to the use of the public highways of the United States.

These definitions contain no authority for a motor carrier to operate by railroad or by water, or to use rail or water routes.

Simply to change the antidiscimination provisions of the act, as the bill proposes to do, will not remove these statutory prohibitions.

Unless the definitions are amended, section 3 of H.R. 4701 could have no effect whatsoever.

To change these basic definitions poses a crucial question of fundamental transportation policy. It involves changing the course and concept of highway transportation with consequent serious effects on the transportation system as a whole.

As part and parcel of the issue presented by section 2 of the bill, we suggest that it is necessary to consider an amendment to section 203(a) (13) along the following lines:

> The term "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways, *or any vehicle or shipping container transported on the line or a railroad subject to part I or the route of a water carrier subject to part III of the act*, in the transportation of passengers or property, or any combination thereof determined by the Commission, but does not include a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street railway service.

The italicized portion indicates additions. I have eliminated the words "any vehicle, locomotive, or car operated exclusively on a rail or rails."

It would be necessary also to amend section 203(a) (14). That section defines "common carrier by motor vehicle" as a person who engages in transportation by motor vehicle "over regular or irregular routes." To this it would be necessay to add the phrase "whether upon a highway or by rail or water."

Comparable amendments also would need to be made in parts I and III of the act, so that no carrier, in the future, would be confined to any particular type of transportation or kind of route, but could employ the services and routes of other modes in the provision of its service.

If Congress is to consider authorizing motor carriers to ship their vehicles or containers via rail or water, in lieu of hauling them over the highways, it should concurrently consider changing the basic law which now confines them to the highways. The law governing the granting of motor carrier certificates, permits, and alternate routes is involved in section 3 of the bill.

Sections 203(c) and 206(a) (1) of the act make it unlawful to engage in for-hire or common carrier transportation on any "public highway" without a certificate.

Before section 3 of the bill could have any effect these sections would have to be amended to make them apply not only to transportation on any "public highway" but to transportation "over any line of railroad or any water route."

Section 208(a) of the act specifies the terms and conditions which the Commission may or must include in motor carrier certificates.

It provides that the certificates must specify either the precise highways over which, the fixed termini between which, or the territory

within which, the holder may operate. Clearly this section would not permit the granting of a route via rail or water.

The force and effect of this section would be destroyed if, as proposed by the bill, motor carriers could depart at will from the operations specified in their certificates.

Accordingly, the proper policing of the proposal made by the bill would require a proviso to section 208(a), reading substantially as follows:

Provided, further, That no certificate shall be construed to authorize the shipment of loaded or empty vehicles or shipping containers by rail or water unless it specifically so indicates, either by specified routes or the naming of fixed termini between which or the territory within which rail or water service may be utilized.

Now if the Commission should be so authorized to amend certificates so as to include therein rail or water routes, adequate standards and safeguards should be provided.

They should include the following, as a minimum, to be spelled out in a separate section of part II of the act:

STANDARDS FOR GRANTING RAIL OR WATER ROUTES

When an application to grant or amend a certificate filed under sections 206 or 212 of this part includes a request for authority to utilize a rail or water route for the transportation of vehicles or shipping containers the Commission shall consider, in addition to the matters referred to in such sections, and shall give due weight to, the effect of such service upon the rail or water carriers to be utilized and upon all competing carriers subject to parts I, II, III, and IV of the act, and authority to utilize such a rail or water route shall not be granted if the Commission finds that the effect or result will be (1) the abandonment or substantial abandonment of highway service by the applicant between any points or within any territory authorized to be served, or (2) to materially shorten the highway route, if any, by which the applicant is authorized to operate, (3) the performance of service as a freight forwarder as described in section 402(a)(5) of this act, or (4) the transportation of any shipment as to which the applicant performs service only within the terminal areas of the terminal cities.

The foregoing standards would require the Commission to consider and give weight to the effect of the new competition that would be generated by the granting to motor carriers of routes by rail or by water. Surely that is a reasonable requirement.

Second, the Commission could not grant a rail or water route to a motor carrier if it found that the effect would be the abandonment or substantial abandonment of highway service by the applicant, or the shortening materially of the existing highway routes of the applicant, or the creation of freight forwarder service.

If such safeguards as these are not written into the law the entire pattern of motor carrier operations, carefully established over a period of more than 30 years, would be destroyed overnight.

The routes specified in certificates would become meaningless—indeed the certificates themselves would become of little value.

And every motor carrier in the United States would be given a wide-open invitation to enter the freight forwarding business without a permit.

Finally, the foregoing section would prohibit the Commission from granting a rail or water route which would include authority (1) to employ a rail or water carrier for the entire line-haul transportation,

or (2) to function as a freight forwarder by assembling and consolidating shipments. It should require no argument to support these patently necessary safeguards.

It would be necessary to close still another loophole to make the foregoing changes in the certificates requirements fully effective.

Section 208(b) of the act authorizes the Commission to permit a motor carrier to "occasionally deviate" from the route specified in its certificate. A proviso should be added to this section to the effect——

That a rail or water route may not be substituted for a highway route under the terms of this subsection.

This would be necessary because otherwise the new standards applicable to the granting of rail or water routes, just discussed, could be rendered meaningless by the granting of such routes on an alternate basis.

Let me turn attention, next, to the permits of contract carriers by motor vehicle. Neither the Presidential recommendation nor section 3 of the bills indicates whether it is the intent to overturn the long-standing principle of law that common and contract carriage may not be mixed.

In view of the long line of decisions on this point, it must be assumed that the recommendation was intended to authorize the shipping by contract carriers of their trailers only as the agent of shippers and beyond the scope of the contract carriers' operating rights.

Mr. Forgash had intended to call attention to one decision of the Commission in docket MC–C–3024—this was a proceeding brought by the National Automobile Transporters Association for a declaratory order—in which it was held that contract carriers might participate in plan I piggyback arrangements.

However, we cannot believe that section 3 of the bill was intended to permit contract carriers to ship their trailers in common carrier service within the scope of their permits.

To insure that this would not be the result, it would be necessary to consider an amendment to section 209(a)(1) of the act along the following lines:

Provided further, That no permit shall be construed to authorize the shipment of loaded or empty vehicles or shipping containers over any rail or water route, but no term or condition of any permit shall limit the right of the holder to forward shipments beyond the territory authorized to be served as the agent and in the name of the shipper.

I might say that this question of the use by contract carriers of piggyback service along with many other questions involving this subject are before the Interstate Commerce Commission now in a proceeding known as docket *Ex parte 230*.

Section 3 of H.R. 4701 is supposed to put other carriers in a "position of equality with freight forwarders." Equality is a two-way street, but the bill does not propose to put freight forwarders in a position of equality with other carriers.

From the very beginning of regulation the motor carriers have had the right to make joint rates with railroads, express companies, and water carriers—a right which is denied to freight forwarders.

That is the characteristic which distinguishes the two types of carriage. Motor carriers have the right to negotiate joint rates on a "divisional" basis, whereas forwarders are limited to the payment of

whatever rates or charges the railroads publish for the use of the general public.

Now it is elementary that if motor carriers are given access to the forwarder method but forwarders are still denied the motor carrier method, equality is not achieved but inequality is compounded.

This is the real test of the sincerity of the desire for equality. There is only one way to achieve it. That is to authorize forwarders to have joint rates, on the same basis as motor carriers, or to remove the right from part II of the act.

The following new paragraphs, if added to section 409 of the act, would authorize freight forwarders to make joint rates with rail, express, and water carriers, limited to the movement of loaded or empty vehicles or shipping containers:

(c) Freight forwarders may establish reasonable through routes and joint rates, charges, and classifications with common carriers by railroad, and/or express, and/or water, applicable to the transportation of loaded or empty vehicles or shipping containers.

In case of such joint rates, fares, or charges, it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(d) Whenever, after hearing, upon complaint or upon its own initiative, the Commission is of the opinion that the divisions of joint rates or charges, applicable to the transportation in interstate or foreign commerce of loaded or empty vehicles or shipping containers by freight forwarders in conjunction with common carriers by railroad, and/or express, and/or water are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate or charge was established pursuant to a finding or order of the Commission and the division thereof are found by by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith.

The order of the Commission may require the adjustment of divisions between the carriers, in accordance with the order, from the date of filing the complaint or entry of order of investigation or such other date subsequent as the Commission finds justified and, in case of joint rates prescribed by the Commission, the order as to divisions may be made effective as a part of the original order.

In concluding my remarks about this section of the bill, I repeat that the freight forwarding industry does not sponsor the amendments I have outlined.

We point out simply that they are integral parts of the question raised by section 3 of the bill, and consideration of that section necessarily involves consideration of the issues raised by the further amendments I have described. I have tried to place the full picture before you.

Turning to section 4 of the bill, section 4 of H.R. 4701 declares it to be in the national interest that the establishment of through service and joint rates, fares, and charges between carriers of all modes of transport be "encouraged and promoted."

With this statement of policy we are in thorough accord. Unfortunately, that policy would not be implemented by section 4 as drafted.

Freight forwarders, which are definitely one of the regulated modes of transportation, recognized as such by the national transportation

policy and by part IV of the Interstate Commerce Act, are completely ignored in the implementing paragraphs of the section.

It is true that freight forwarders subject to the Interstate Commerce Act are not today authorized to have joint rates with other carriers.

Forwarders are, however, permitted by section 409 of the act, to make contracts, in the nature of joint rates and divisions, with motor carriers, subject to certain limitations.

Furthermore, Public Law 87–595, approved by the President on August 24, 1962, authorizes the establishment of joint rates and through routes between motor and water carriers in transportation to and from Alaska and Hawaii, and the authorization applies to non-vessel-owning carriers, which are oceangoing freight forwarders.

Bill H.R. 4701 is not only discriminatory in this regard, it is highly inconsistent in its treatment of freight forwarders in regard to through routes and joint rates.

Section 4(b) of the bill amends section 1003(b) of the Federal Aviation Act of 1958 so as to authorize through service and joint rates between air carriers, part I, II, and III common carriers, and common carriers subject to the Intercoastal Shipping Act of 1933.

It includes in this authorization "persons who hold themselves out to transport goods by water but who do not own or operate vessels," which means ocean freight forwarders.

But it excludes freight forwarders subject to part IV of the Interstate Commerce Act. The same section of the bill excludes air freight forwarders from the joint-rate authorization, but includes air express companies.

Obviously, the same considerations which justify authorizing oceangoing freight forwarders to have joint rates with other carriers justify and require extending the authorization to surface freight forwarders.

And there is absolutely no distinction, legal or practical, between air freight forwarders and air express companies.

From the very beginning the Civil Aeronautics Board held that both air express companies and air freight forwarders are embraced within the definition of an air carrier under the regulatory act, and are "indirect air carriers."

It drew no distinction between them, saying, in the lead case, that the act embraces—

> all common carrier operations by air, whether direct or indirect, and * * * those who, as common carriers, forward by air, whether Railway Express Agency or some other type of forwarder, should be "air carriers" (Railway Express Agency, Certificate, 2 C.A.B. 531, 1941).

The Board repeated the same finding the next year in passing upon an application of Universal Air Freight Corp., a freight forwarder (Universal Air Freight, Investigation, 3 C.A.B., 698, 1942).

Despite the fact that air express companies and air freight forwarders are identical in the contemplation of the law, this bill would give express companies the right to enter into joint rates with other carriers and deny that right to forwarders.

Presumably, if the forwarder called itself an express company it would have the same rights as express companies, but it is a travesty on justice to make such a distinction in a Federal statute.

To remove this inequity and to conform the substance of section 4 of the bill with its announced policy, we suggest that the proposed

amendment of section 1003(b) of the Federal Aviation Act of 1958, appearing at the top of page 5 of the bill H.R. 4701 be changed to read:

(b) Air carriers subject to the Federal Aviation Act of 1958, including air carriers not directly engaged in the operation of aircraft in air transportation, common carriers subject to parts I, II, III, and IV of the Interstate Commerce Act, as amended, and common carriers by water subject to the Intercoastal Shipping Act, 1933, as amended (including persons who hold themselves out to transport goods by water but who do not own or operate vessels), may establish reasonable through service and joint rates, fares, and charges with any other such common carriers in connection with the transportation of persons or property in interstate or foreign commerce.

Section 9(a) of H.R. 4701 would amend section 321 of title III, part II, of the Transportation Act of 1940, so as, among other things, to extend the authorization now provided by that section for Government agencies to procure transportation without advertising for bids to "mail transportation services performed by common carriers by motor vehicles."

We think that the authorization to procure mail transportation without advertising for bids should be extended to freight forwarders as well as motor carriers.

The proviso to section 321 which the bill would amend, and which is now limited to the transportation of general commodities, applies to freight forwarders.

If the proviso is to be expanded to include the transportation of mail, it should not be limited in that regard to motor carriers, but should include freight forwarders as well.

Conditions in transportation are rapidly changing. If the Post Office Department is to be given greater flexibility in arranging for the transportation of mail, as the President's report recommends, why should any common carrier be excluded?

The proviso to section 321 of the Transportation Act of 1940, which the bill would amend, now applies to "any common carrier" subject to the Interstate Commerce Act.

It is not only discriminatory but illogical to extend the terms of that proviso to the transportation of mail by motor carriers, excluding freight forwarders.

The Postmaster General would not be required to use freight forwarders, and he might not choose to use freight forwarders, but that is no reason why the right to do so should be withheld.

The freight forwarding industry believes that it could, under certain circumstances, provide valuable service to the Post Office Department in the transportation of mail.

We suggest, therefore, that section 9(a)(1) of the bill be amended by striking out the phrase "by common carriers by motor vehicles." Section 321 of the Transportation Act of 1940, as amended by the bill, would then apply uniformly to all common carriers subject to the Interstate Commerce Act, with regard to the transportation of general commodities and of mail.

The members of the Freight Forwarders Institute either have no interest in or have been unable to formulate a position with regard to the other provisions of H.R. 4701.

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With respect to H.R. 4700, which I have not commented on in my prepared statement, the freight forwarding industry has no position with regard to this bill.

I would point out that the transportation of agricultural commodities is completely exempted already from part IV of the act so that part of the bill would have absolutely no effect.

Secondly, freight forwarders are confined to the handling of freight which can be consolidated into larger lots, and, therefore, I doubt if they could ever handle bulk commodities, so this bill would have no practical effect on the freight forwarding industry. As to its effect on the industry in principle, our industry has simply not been able to formulate a position.

There is one technical provision of the bill which should be changed and that is section 3, appearing on page 4. Section 3 amends section 418 of the Interstate Commerce Act so as to provide that freight forwarders could use carriers engaged in transportation exempted under the provisions of section 1(23) or 303(b) of the act.

Forwarders already are authorized to use carriers subject to 303(b) by the terms of section 418. And I point out that section 1(23) doesn't exempt any carriers at all. It simply exempts certain commodities, and we are authorized to utilize all of the carriers who would be authorized to handle these commodities, so this section of the bill simply should be stricken.

It is unnecessary.

That concludes my statement, Mr. Chairman. I thank you very much for hearing me.

The CHAIRMAN. Thank you, Mr. Morrow.

Mr. Williams?

Mr. WILLIAMS. Mr. Morrow, let me congratulate you on having done your usual good job in presenting the case for the industry that you represent.

Mr. MORROW. Thank you, sir.

Mr. WILLIAMS. I don't have any questions except one or two clarifying points that I would like to raise. One is on page 11 of your statement. That is the language that you suggest be included in the bill which is outlined at the top of the page.

Mr. MORROW. Yes, sir.

Mr. WILLIAMS. Would you clarify just what you mean by that? Does that mean, for instance, that a truckline which operates between point A and point B could not ship by rail between points B and C which are in between?

Mr. MORROW. No, sir. I had suggested this approach: That the law be amended so that the Interstate Commerce Commission could revise motor carrier certificates on proper proof and could authorize a rail route to a motor carrier between those points, but I am pointing out here that under another provision of the law, motor carriers today have a right to substitute one highway route for another.

All I am suggesting here is that, having obtained the right to ship by rail, they would not be able to interchange routes.

They could substitute one rail route for another between the same points or one motor route, but if they could switch back and forth, then there would be no control over the service, so that this was simply

a rounding out amendment, which is supplemental to the prior amendment which would give the Commission the right to grant rail routes to motor carriers.

Mr. WILLIAMS. You feel that the language that you suggest will accomplish that purpose?

Mr. MORROW. Yes, sir. I do.

Mr. WILLIAMS. One other question. That is in regard to the provision of the bill that would authorize Government agencies to procure transportation without advertising for bids?

Mr. MORROW. Yes, sir.

Mr. WILLIAMS. I can well understand that if that should be followed you would feel that the freight forwarders should certainly come in for consideration under that?

Mr. MORROW. Yes, sir.

Mr. WILLIAMS. By the same token, are you in a position to explain the philosophy behind the suggestion that they be authorized to procure transportation without advertising for bids?

In other words, do you take a position on whether or not the Department should be permitted to negotiate without advertising for bids?

Mr. MORROW. Yes, sir. I think so. The Post Office Department, itself, I believe, some years back, suggested that they be given the right to use motor carriers on some basis other than the advertising for bids, which is substantially the way they obtain the star route transportation, and it is rather complicated, as I understand.

I am not an authority on it. At that time, we also suggested that freight forwarders be included in that bill, but it never did get out of committee.

At the present time it is a difficult process for the Post Office Department to utilize anybody other than a railroad under the Railway Mail Pay Act, and I think this is a good provision because it would permit the Post Office Department to selectively use carriers that are in a position to serve it between any two points.

If freight forwarders were required, like the railroads are, to transport mail anywhere at any time, they might not be in a position to provide good service, but between certain points they might be in a position to provide good and regular service, so this provision of the bill makes sense to me and if it is amended to include freight forwarders we wholeheartedly support it.

Mr. WILLIAMS. Thank you very much, Mr. Morrow.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman. Mr. Morrow, you proposed a number of amendments here in which you use the expression "granting to the motor carriers rail and water routes"?

Mr. MORROW. Yes, sir.

Mr. YOUNGER. The purpose of these is to permit a motor carrier to have those routes for piggyback?

Mr. MORROW. Yes, sir.

Mr. YOUNGER. That is the purpose of all those amendments that you are proposing?

Mr. MORROW. Yes, sir. And, as I said, we don't support that, but there is control over permits today.

The precise routes that the motor carriers can use are spelled out in the certificate and if they are indiscriminately permitted to institute rail or water routes without any control, I think it is going to destroy, looking at it from the standpoint of truckers, the value of certificates.

I think everyone ought to know that between points A and B, the ABC Motor Line is authorized to operate by Highway 123 or by instituting rail piggyback service by the Pennsylvania Railroad or some other road.

Mr. YOUNGER. Then, why do you say that a rail or water route may not be instituted for a highway route, this amendment Mr. Williams was just discussing?

Mr. MORROW. You would have to probably look at the whole section to understand the meaning of that; 208(b) of the act says:

> A common carrier by motor vehicle operating under any such certificate may on occasion deviate from the route over which, and/or the fixed termini between which, it is authorized to operate under the certificate, under such general or special rules and regulations as the Commission may prescribe.

This is referring to highway routes and my proposed proviso would say that a rail or water route may not be substituted for a highway route under the terms of the subsection.

That assumes that the motor carrier already has in its certificate a right to use a rail route. It has been spelled out in its certificate.

This proviso of mine would permit a motor carrier to continue to substitute one highway route for another. It is generally done on some emergency basis because of washouts or something of that sort.

It is intended to be purely a temporary thing and I don't attach much significance to that particular amendment, but it did occur to me that there shouldn't be a jumping back and forth between rail and water routes on the basis of substituting one route for another.

They would have the rail route and they could use it, but as to a motor carrier that hadn't gone to the Commission and obtained an amendment to its certificate so that he could use piggyback service and everybody would know where he could use it and that he was going to use it—if he hadn't got that right, he shouldn't have the right to substitute a rail route without having it in his certificate. That is what I was trying to accomplish.

Mr. YOUNGER. It seems to me to make this clear it should provide further that, "provide that it is not included in its certificate."

Mr. MORROW. This might be very wise. I can see that it is confusing the way it is now and I would certainly accept that further change.

Mr. YOUNGER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. Morrow, you made an excellent statement this morning.

Mr. MORROW. Thank you, sir.

Mr. DINGELL. However, I am concerned with your comment at the bottom of page 3 about the second half of the last paragraph, where you say:

> This ignores the fact that the basic scheme of the law, and numerous specific provisions thereof, make it unlawful for a motor, rail, or water carrier to use the services of other carriers as shippers.

Why would it be bad for us to make the exception of which you complain? I would like to have you make a more complete statement on that.

Mr. MORROW. Well, looking at it first of all from our standpoint, which is the selfish viewpoint we have to take, we are permitted to utilize other carriers as shippers.

Mr. DINGELL. As a matter of fact, you must.

Mr. MORROW. We must; we are required to and freight forwarders are the only common carriers subject to regulation who are required to operate with that dual status.

They have to become shippers in order to function at all. The other carriers are confined by law, we think, to operations over steel rails, or over highways, or on the waterways and they are authorized, if they want to enter into a joint service extending beyond their lines, to make arrangements on the basis of joint rates with any other carrier.

That is perfectly proper and that results in a coordinated service, but if instead of joining with other carriers in a joint service, which gives directly to the shipper the inherent advantages of each mode for that part of the transportation it performs—if one carrier instead of doing that is permitted simply to become a shipper or a freight forwarder—first, it invades the field of freight forwarding we think and would create additional and severe competition with us and, secondly, we think it destroys the inherent advantages of the various modes which are spelled out in the act.

The bill would require other carriers to assume that dual role which the law requires freight forwarders to assume. There would be no privity between the rail carrier, for example, hauling motor common carrier trailers and the shipper himself.

Mr. DINGELL. There is not in the use of the freight forwarding now.

Mr. MORROW. That is right, there is not. That is the distinction between the two types of service.

Mr. DINGELL. The objection that you make appears to go right to the heart of the section, as I read it.

Mr. MORROW. Yes, sir; I think it does.

Mr. DINGELL. In other words, what you say really is that it would be piggyback carriers by railroads for truckers?

Mr. MORROW. No, sir.

Mr. DINGELL. This is really your point?

Mr. MORROW. No, sir; it is not. We think that they should continue to have the right and there is nothing in here to disturb the right which they have to ship their trailers by rail on the basis of joint rates and they do that today under two plans.

One is called plan No. 1. It is the oldest of the plans. Under that plan the motor carrier makes a contract with the railroad to haul its trailers and they call that contract a joint rate or a division.

It is not like any conventional division anybody has ever heard of and there is some litigation involving it pending now, but nevertheless, they do use it on that basis and then they use it on the basis of plan No. 5, which is a pure joint rate.

It is the same basis on which they deal with railroads on any other transportation. These are the conventional, legally authorized methods by which motor varriers may and do use piggyback service.

If you are going to try to level out the situation, as I pointed out, then you should give everybody the right to have both joint rates and to ship, but this bill doesn't propose to achieve that kind of equality.

Mr. DINGELL. Why should a freight forwarder need the right to establish joint rates?

Mr. MORROW. We don't press for the need. We bring it out to make this point: That if we are going to have equality of opportunity, you couldn't just give one person what another person has without giving the other person what the first person has.

Mr. DINGELL. I meant to be perfectly fair with you, but I want you to explain to me why it is necessary to a freight forwarder that he should have the right of making joint rates because of the nature of his business.

He is as to the original shipper a carrier and he is as to all carriers a shipper. Why would he need the right to make joint rates when he already has the right to serve as essentially a shipper in his own right?

Mr. MORROW. Well, there are some practical reasons, some of them recognized by the Congress as far back as 1942 when we were first regulated. We need the right to make joint rates or something in the nature of joint rates with our assembly and distribution carriers and we were given that right.

At first it was on the basis of joint rates as a temporary measure and ultimately in 1950 the Congress decided to call our arrangement contracts, but we do not pay the tariff rates of motor carriers that we use except at distances over 450 miles on truckload lots.

That is a practical need for a joint rate.

Mr. DINGELL. In other words, the exemption authorizes you to haul truckload lots up to 450 miles and is the basis on which you should have the right to make joint rates?

Mr. MORROW. No. I was trying to illustrate some reasons why it might be helpful. In the case of piggyback, while we have not advocated on our own that we be given the right to make joint rates with the railroads, so long as this bill does give it to everybody else and also proposes to make them shippers, we say that we should have the same right.

A practical reason for that is this: The motor carriers under plan No. 1 which I have described to you, do get better or lower charges from the railroads for hauling motor trailers than we get as shippers, giving the railroads ours.

Mr. DINGELL. In other words, you are saying this puts you in a prejudicial position?

Mr. MORROW. Yes. We are disadvantaged, we think, right now but we are not coming to Congress with that, except to say as long as this bill is before you and proposes equality, let us make it full equality, but we do have these problems before the Interstate Commerce Commission.

In *Ex parte 230* we are urging before the Commission that they should control these things and that there should be some equality of charges, and we thing the Commission has the power under the present law to equalize the situation.

However, we come before you since you have this bill here proposing equality to point out the inequalities that we are faced with now, and that is frankly, the reason we advocate joint rates in this bill. The bill is eloquently silent as to surface forwarders, although it gives oceangoing forwards the right to make joint rates with other carriers.

Mr. DINGELL. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. No questions.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Keith?

Mr. KEITH. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Mr. Morrow, would mind describing just what a freight forwarder is?

Mr. MORROW. Yes, sir; I will undertake that.

Mr. KORNEGAY. What is the scope of the operation?

The CHAIRMAN. While that is brought up, I intended to ask you to do that and to say to you, Mr. Morrow, that perhaps you may not be aware of the fact that we have several new members on this committee who have never had an opportunity to find out just what a freight forwarder is, what service they perform, and something about your operation.

I think, for them, as well as refreshing the minds of some of the rest of us, it would be of value to give a rather full explanation of your service and operations.

Mr. MORROW. Thank you very much, Mr. Chairman. I think I should apologize for not having started out describing what a freight forwarder is. A short definition of a freight forwarder is that he is an indirect common carrier and, in that broad legal sense, he is most comparable to an express agency.

I don't mean the express agency of today which is wholly owned by the railroads, but the freight forwarder and the old individual express agencies grew up together in this country, in the days of the pioneering of rail transportation and other forms of transportation.

They happened to take different routes. The freight forwarder always did function by consolidating small shipments of freight into larger quantities, into whatever quantity would provide the next rate break, or into a carload.

The forwarder assumes full common carrier responsibility to the shipper for each of these small shipments which he accepts, issues a bill of lading just like any other carrier, and then he brings these shipments together—and, incidentally, still does this—at a central point, and there he consolidates them into larger lots, he ships them in carload or larger lots by rail or by motor, and pays the rate which is published for the larger lot.

Then, there is a difference or a spread between what the forwarder pays for this consolidated part of the transportation and what he charges for the individual lots that are in the shipment.

At a terminal point where the forwarder has his terminal operations, he breaks these shipments down again into individual lots and gives them to motor carriers or other carriers to deliver to the consignee, so that a shipper using a freight forwarder service knows only the freight forwarder.

He pays a rate which the forwarder publishes with the Interstate Commerce Commission and, if anything happens to the shipment, he collects from the forwarder.

In other words, the forwarder in all respects is the carrier to the shipper, but he, in turn, becomes a shipper as to the consolidated lot of freight that is shipped by rail between the forwarder's terminal points.

The freight forwarder is not simply a man who does business in his hat. There are about 80 forwarders in the country. They have gross revenues of about $450 million, and they handle about 5 million tons of freight a year, composed of 25 million individual shipments.

They have their own terminals, many of them leased from the railroads under lease, but they are some of the largest and most modern freight terminals in the world.

The forwarder is an expediter. His benefit to the shipper is that he provides a faster service and, sometimes, although more infrequently today, a cheaper service. But the speed of the service and the personalized attention, the ability of the shipper to trace a shipment, an l.t.l. or l.c.l. shipment, when it is in forwarded service, which is quite difficult to do if it is in other services, all of these things provide the incentive for a shipper to use a freight forwarder.

The legal definition of a forwarder is any person who, as a common carrier, holds himself out to the public to transport shipments and, in the ordinary and usual course of doing so, assembles, and consolidates, and breaks bulk and distributes, assumes responsibility from the actual origin to the ultimate destination, and uses only common carriers subject to parts I, II, or III of the act.

That is the legal niche carved out for the freight forwarders in 1942.

Mr. BROTZMAN. Will the gentleman yield right there please?

Mr. KORNEGAY. Yes.

Mr. BROTZMAN. Subject to parts I, II, or III of the act?

Mr. MORROW. Yes, sir.

Mr. BROTZMAN. Meaning what kind of carriers? I was going to ask this question. Would you be more specific on that?

Mr. MORROW. Yes, sir. A surface forwarder, as regulated under part IV of the Interstate Commerce Act, is confined to the use of common carriers by rail or express subject to part I, and——

The CHAIRMAN. I think what Mr. Brotzman had in mind, which he probably may not be fully aware of, is part I of the Interstate Commerce Act refers to railroad operations; part II, motor carrier operations; and part III, to water carrier operations.

Mr. BROTZMAN. Thank you, Mr. Chairman.

The CHAIRMAN. And now part IV is the freight forwarder?

Mr. MORROW. That is exactly correct. I wanted to add, so that you would not think that this is the only kind of forwarder that operates, that this is a surface forwarder we are talking about, and that is the industry I have been describing.

There are air freight forwarders and they are excluded from regulation under part IV by specific exclusion. They are regulated by the Civil Aeronautics Board, and there are quite a few air freight forwarders operating in the United States and internationally.

There are also foreign freight forwarders, and just last year, or the year before, these foreign freight forwarders were defined and regulated under the shipping acts—so that we have three kinds of forwarders.

The foreign forwarder probably is the oldest of the lot. I mean, back in the 1880's and 1700's, the forwarder was operating in foreign shipping; but the problems which we have been discussing here, of course, relate only to the surface forwarders, and that is the reason I didn't mention the other phases of the industry.

Mr. YOUNGER. Will you yield there for one question?

Mr. BROTZMAN. Yes, sir. I will be glad to.

Mr. YOUNGER. I think it would be well to state also, to clear the atmosphere for another bill which we have, that, under the present act, a freight forwarder cannot own the carrier, but a carrier can own the freight forwarder?

Mr. MORROW. Yes, sir.

Mr. YOUNGER. Isn't that true?

Mr. MORROW. That is correct. Yes, sir.

Mr. KORNEGAY. That is, in a sense, the next question I was going to ask you, Mr. Morrow: whether or not the freight forwarder owned, or had any interest in, any of the systems of transportation which he might use?

Mr. MORROW. They have wide interests in the truck operators who provide the assembly and distribution service for the forwarders within the terminal areas of cities, but they are prohibited by law from directly operating their own transportation facilities in line haul.

The terminal areas of cities in many cases are quite extensive. They go here in Washington almost out to Rockville and there are people who are advocating extending the Washington terminal area to Rockville.

With the growth of cities, the terminal areas may some day merge in the eastern part of the country here. Within those areas the forwarders do own and operate many thousands of trucks, but outside of the areas they are confined to the use of other carriers.

Mr. KORNEGAY. In other words, it is only within the terminal areas that you have any joint ownership with the carriers?

Mr. MORROW. Yes, sir. That is correct.

The CHAIRMAN. That is true of both ends? The assembly and distribution too?

Mr. MORROW. Yes, sir. And even in the middle. I mean in Chicago, which is a big transfer point, we own our own trucks to take freight from one freight house to another—at both ends and in the middle.

Mr. KORNEGAY. Do you handle large lots as well as the small ones?

Mr. MORROW. Yes, and no. I will have to explain. The definition of a forwarder requires us to assemble and consolidate freight. We can handle any lot of freight that we can put together with another shipment in order to make one shipment out of it.

We have rates today which are used primarily in piggyback service for as high as a 30,000-pound lot. We have rates up to 30,000 pounds. Prior to piggyback we couldn't establish rates for a shipment that big because the rail carload rates didn't generally run much higher than that, but in piggyback they run as high as 70,000 pounds, so with an opportunity to consolidate and make up a 70,000-pound shipment we found that we could go as high as 30,000 pounds. In a proceeding decided by the Commission 2 or 3 years ago and affirmed by the Supreme Court last year, our right to handle that big a shipment has been affirmed.

Mr. KORNEGAY. I think that is all, Mr. Chairman.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Cunningham?

Mr. CUNNINGHAM. No questions.

The CHAIRMAN. Mr. Brotzman?

Mr. BROTZMAN. Just one or two, Mr. Chairman, if I may. If I understood the general advantage to be obtained by a shipper from your service, I think you said, No. 1, that there might be faster service?

Mr. MORROW. Yes, sir.

Mr. BROTZMAN. And I think you testified that you were in the nature of an expediter to see that the thing got done. Is that correct?

Mr. MORROW. That is correct.

Mr. BROTZMAN. The second feature that you mentioned was, it is sometimes cheaper?

Mr. MORROW. Yes, sir.

Mr. BROTZMAN. Do you mean it is not always cheaper if they deal with a forwarder? If I understood your other testimony, you bring smaller shipments together to, I assume, be able to give a better rate because of the larger shipment. Is that not correct?

Mr. MORROW. Yes, sir, be able to obtain a better rate.

Mr. BROTZMAN. Yes. My question is, Would it always be cheaper or less expensive to ship by freight forwarder, if you could place the business?

Mr. MORROW. No, sir, unfortunately, it is seldom cheaper. I mean it is the exception, and where our rate might be lower than a motor carrier rate between two points, between two other points the motor carrier's rate might be even lower than ours.

It is a matter of cost and many years ago the forwarder nearly always was able to give the shipper a lower rate, but today, the costs of doing business are such that the freight forwarding industry finds it impossible to establish rates that are lower than the comparable rates of other carriers.

Mr. BROTZMAN. Then basically, you are selling a service perhaps more than economy. Is that correct?

Mr. MORROW. That is true today. It is almost entirely on the basis of service. In addition to speed and expedition there are the advantages of more efficient tracing of shipments.

The reliability of the forwarder, being a more personalized type of carrier, makes the service dependable. The shipper can count on the regularity of delivery, we hope—at least this is one of our selling

points—more than he could if he uses another service, but it is all a matter of service today and the rate matter is almost negligible.

Mr. BROTZMAN. Did you testify as to what your attitude was relative to H.R. 4700? I scan-read your statement, and I see most of that is devoted to testimony on H.R. 4701. Did you enter any testimony in regard to H.R. 4700?

Mr. MORROW. I said merely that we do not have an industry position on the matter. I suppose you would find individual forwarders that might favor it or not favor it, but the effect on the forwarding industry is not direct, as I pointed out, because we do not handle bulk commodities as such and the transportation of agricultural commodities is already completely exempted under part IV, so that would have absolutely no effect on us and therefore the industry has no position on the merits of the bill.

Mr. BROTZMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Morrow, I want to thank you in behalf of the committee for your testimony here and, as Mr. Williams has so appropriately said, the very good job which you usually do.

Mr. MORROW. Thank you very much, Mr. Chairman.

The CHAIRMAN. We are glad to have you before the committee.

Mr. MORROW. I appreciate the opportunity.

The CHAIRMAN. The next witness will be Mr. John C. White.

STATEMENT OF JOHN C. WHITE, MANAGING DIRECTOR, ACCOMPANIED BY JOSEPH M. CREED, TREASURER AND MEMBER OF BOARD, AND WILLIAM A. QUINLAN, SPECIAL COUNSEL, PRIVATE TRUCK COUNCIL OF AMERICA, INC.

Mr. WHITE. Mr. Harris, would you have any objection if Mr. Joseph M. Creed, counsel of the American Bakers Association, and treasurer and member of the board of the council, joined me at the table?

The CHAIRMAN. Not at all. We would be glad to have him join you.

Mr. WHITE. Thank you, sir.

The CHAIRMAN. You are managing director of the Private Truck Council of America, Inc.?

Mr. WHITE. Yes, sir.

Mr. HEMPHILL. What is the gentleman's title?

Mr. WHITE. He is general counsel of the American Bakers Association.

The CHAIRMAN. You may proceed.

Mr. WHITE. Thank you, sir.

My name is John Clark White. I am managing director of the Private Truck Council of America, Inc., 711 14th Street, NW., Washington, D.C.

The council's activities are devoted exclusively to the interests of private truck operators. It is a completely independent organization and is therefore not a part of or affiliated with any for-hire organization. It has been in existence for 24 years.

The council is firmly dedicated to what we consider to be the inalienable right of all persons, other than those in the business of for-hire transportation, to operate motortrucks in the furtherance of their own enterprises.

Council membership is composed of companies which produce, service, distribute, or manufacture products or materials of every kind.

Industries represented on council rolls are, among others, bakers, petroleum, furniture, steel, bottling, chemical, beverage, dry goods, dairy, meat packing, gas, truck and automotive, food, et cetera.

Council affairs are managed by a board of directors numbering some 40 men who are in turn governed by policies and directions dictated by the membership at annual meetings.

Civil forfeiture and other like proposals which are directed solely at private truck operators have been under active consideration by the council for more than 2 years. The statements made by me today are with the advice and consent of the board, the membership, and council's legislative committee.

My presentation deals entirely with the so-called omnibus bill, H.R. 4701, and, more specifically, with sections 5 and 6 of this bill. Both sections represent an effort to curtail alleged violations of the Motor Carrier Act. Section 5, in this respect, has some merit. Section 6, has none.

COOPERATIVE AGREEMENTS (SEC. 5)—COUNCIL'S POSITION

We do not disapprove of section 5 because it appears to be a true enforcement provision. Section 5, if enacted for the purposes mentioned and with the intent indicated, will go far toward curing the alleged inadequate enforcement of State and Federal laws relating to the transportation of commodities and materials moving in intra- and interstate commerce. There should be close cooperation between State and Federal authorities in the enforcement of highway laws, and this section should tend to foster a healthy effort in that direction.

We consider section 5 to be in keeping with one of council's more important policy statements, which reads:

> This council—representing persons who operate trucks only as a bona fide incident to their own nontransportation enterprises, but many of whom are also substantial users of for-hire transportation—is vigorously and unalterably opposed to all violations of law in the operation of trucks, and is actively dedicated to promoting full compliance through improved information and understanding, as well as enforcement, of relevant laws and regulations.

This is the civil forfeiture provision. This section may be divided into two parts. One part relates to safety violations. The other part is usually designated as relating to unlawful operations.

A. The first part, "Safety," has reference to those sections which are enumerated in the proposed bill as being sections 204(a)(1), 204(a)(2), 204(a)(3) and 204(a)(3a); 204(a)(1) has to do with common carrier safety regulations; 204(a)(2) has to do with contract carrier safety regulations; 204(a)(3) has to do with private carrier safety regulations; 204(a)(3a) has to do with migrant workers.

Each of the 204 sections has already been dealt with by other witnesses who have clearly pointed out the gross inequities that could easily arise if safety violations were prosecuted under the civil forfeiture provision of the Motor Carrier Act.

We have no lack of faith in the Interstate Commerce Commission, but placing such power to destroy for minor safety infractions in even the best of governmental agencies runs counter to our system and form of Government.

Though improvement can and will be had in the enforcement of safe operations by motortrucks, we cannot overlook the obvious fact that the motortruck's safety record is far superior to that of the automobile.

Though the council adamantly opposes this part of section 6 for the same reasons already succinctly stated by other witnesses, we will in deference to the committee and its valuable time, dwell on this particular subject no longer.

B. The second part of section 6, which we have referred to as relating to unlawful operations, deserves clear-cut comment and thorough understanding. The council is as vigorously opposed to this portion of section 6 as it is to the safety portion, but for different reasons.

This harsh and stringent method of curing an alleged enforcement problem represents an abdication by the Interstate Commerce Commission of an important portion of its present primary jurisdiction.

It means the private truck operator will now lose or could lose, the expertise and the highly centralized convenience which the present law affords him through the offices of the Commission.

The private truck operator for well into the second decade fought his battles through the Commission, the courts, and the Congress before clearly establishing his identity by means of the primary business test.

First, he ran the gamut of the Commission's administrative procedures which brought to bear the expert knowledge of the technical aspects of the motor carrier field.

Next, his case having been fully developed by those who best understood the basic truths involved, he took his case to the Federal courts where his "test" was fully approved. Finally, his long-sought identity was by Congress codified into law.

The private truck operator presently enjoys a stability rare in this day of fast-moving economic changes. But he stands to lose much of what he has gained if the civil forfeiture provision of the Motor Carrier Act is extended as proposed.

The suggested amendment will place his operations at the mercy of the decisions of Federal courts in 90-odd jurisdictions in lieu of the single jurisdiction which now controls.

Enactment of this provision will probably result in increased litigation against private operators in which these many courts will determine questions of the sometimes fine distinctions between private truck operators, leasing and for-hire carriage without benefit of prior proceedings before the Commission.

Prior proceedings in which intervention by interested and experienced organizations such as the council could have been made in particular cases.

Under the present act, most questions of interpretation which are of general interest arise first in proceedings before the Interstate Commerce Commission and are decided first by the Commission in the light of their expertise and the informed participation of intervenors.

Such intervenors are usually intimately familiar with this special field of regulation and they help develop general implications of importance to broad groups of interested persons.

These intervenors are freely granted leave to intervene in such matters because of their important contribution to sound development of the law.

Judges, in turn, have, on appeal from Commission decisions, the benefit of this prior process before a specialized administrative body, and prior intervenors are parties on said appeal.

Of considerable practical importance also is the fact that such proceedings are focused in Washington, so that it is a relatively easy matter to keep track of cases of importance, and, when advisable, to participate in them.

Under the proposed amendment the situation would be in sharp contrast. There would develop a multiplicity of suits in Federal courts throughout the United States in which judges not knowledgeable in this specialized field would decide questions of widespread industrial and public interest without the advantages of the prior administrative process.

Likewise, associations such as the council could not participate except perhaps to the limited and restricted extent of appearing amicus curiae and which is seldom granted even if the case and its implications were learned about in time and even if funds and qualified personnel were available.

This bill would thus result in an interpretive jungle, in a field of regulatory Government which Congress has so far regarded as requiring a specialized and expert administrative process.

There is little question but that by far the greater impact of such proposed proceedings will be felt by the private truck operator rather than by the for-hire carrier.

It is the private truck operator at whom the Commission has apparently aimed, because—it is professed—his operations, or those of the illegal, uncertificated for-hire operators, cannot easily be proven to be intentionally or willfully unlawful, if indeed they are unlawful at all.

It is difficult to disassociate the effort embodied in this proposed amendment from the barrage of propaganda that has for years poured from for-hire sources, all of which is beamed toward restricting or eliminating the private truck operator.

For them—the for-hire interests—the reasons are obvious, much of today's private operations, should they somehow be prevented or hindered, mean profits to those who live off the business of transportation.

Those who have for years led the fight to cripple private operations have even developed the familiar gimmick of manufacturing a catchphrase: "gray area."

They have pounded it home well and have made "gray area" all too synonymous with private truck operations. Never do they admit that their own violations are also a part of the "gray area."

Never do they suggest that private trucks outnumber for-hire trucks by 10 to 1 and that for that reason alone the former may be involved in a greater number of violations of one kind or another.

Never do they explain that the growth of private operations through the years is the same or barely in excess of for-hire operations.

Never do they admit of the possibility that their concern may stem from the desire, not the need, for profits—rather than a real desire

for a healthy transportation system. Always there is the constant, subtle refrain that insinuates there is something unclean or irregular about all private truck operations.

A brief note about the penalties included in this legislation. Please do not overlook the fact that the $500 figure is an arbitrary amount. A judge would have no recourse but to levy a $500 penalty for each offense complained of regardless of its significance.

Likewise, there is no provision for notice relating to the exact time a "continuing violation" began. Even under the provisions of section 222(a) where "a not less than $100 fine" is provided, it can, depending on how many counts are involved, amount to an extremely harsh penalty for a small carrier, for hire or otherwise, obviously guilty of a series of small regulatory infractions. The judge himself can do little about adjusting the fine to fit the violation and the actual facts in the case.

To conclude, we are firmly in favor of the enforcement of motor carrier laws of our States and Federal Governments, but we are opposed to harsh, arbitrary methods which may result in a diminution of a legitimate private operator's right and privilege to transport his own goods.

We will not presume to suggest which motor carriers the Commission might tend to prosecute under the proposed civil forfeiture provisions, but we can safely say the Commission would have within its power the right to capriciously withhold prosecution or move against any carrier it chose and without regard to any knowledge or intent on the part of said carrier of any alleged or real violation.

Council stands for sensible enforcement but it is opposed to confiscatory legislation which to no little extent is what civil forfeiture in this instance amounts to.

Thank you, gentlemen.

The CHAIRMAN. Thank you very much.

Mr. WHITE. Mr. Harris, might I make another request of you?

The CHAIRMAN. Yes.

Mr. WHITE. The truck council's special counsel, Mr. William A. Quinlan, has come into the room and I would like to have him join me too if I might.

The CHAIRMAN. Very well.

You want him available to assist you in answering any questions that might be asked?

Mr. WHITE. Certainly do, sir.

The CHAIRMAN. All right.

Mr. Staggers?

Mr. STAGGERS. No questions.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

This question of private carriers has been one of those questions which we have had before us a number of times, and I notice that you are quite explicit on page 7, where you say: " * * * legitimate private operator's right and privilege to transport his own goods"?

Mr. WHITE. Yes, sir.

Mr. YOUNGER. As you know, therein lies the problem. To carry that out, would you object to a provision in this bill which would

directly prohibit any leasing of your trucks or carrying other than a product which the owner of the truck can use in his own business?

For instance, as an example, a manufacturer of furniture carrying furniture to Chicago from Michigan could carry back lumber or material which he uses in the manufacture of that product, but couldn't pick up some exempt agricultural product or some other product as a backhaul, and it is this backhaul that is creating most of the difficulty.

How are we going to handle that?

Mr. WHITE. If you don't mind, sir, this is an area where I think Mr. Quinlan could be most helpful in answering a question of that nature, our special counsel.

Mr. YOUNGER. Yes, sir.

Mr. QUINLAN. Mr. Younger, may I answer your question in two parts, sir, separating the aspect of your question which deals with exempt for-hire carrying of agricultural commodities from the other part of the question?

The answer to the other part of the question is that the act presently, and completely and clearly in my judgment, prohibits any backhauling which is not within the primary business of the operator of the truck, which is not within the same primary business that involves the outgoing transportation. This is as a result of the construction of the act by the Commission, by a special three-judge Federal court, and by the Supreme Court, in the *Brooks Transportation* case, which construed the act prior to the 1958 amendments as establishing a "primary business test" to distinguish between private and for-hire carriage and which held that under that test, a private operator can only operate trucks as a bona fide incident to a primary business of his own other than the business of transportation.

That construction by the Court was codified by section 203(c), which is now part of the act and which spells out in specific terms in the act that "primary business tests."

Now, however, as to backhauling which is admittedly for-hire transportation of agricultural commodities, that is expressly exempted, as I am sure you know, sir, by section 203(b)(6) of the act, and with regard to the exemption of for-hire hauling of agricultural commodities the Private Truck Council of America has no policy, because we are concerned only with private truck operation and not with for-hire hauling, whether exempt or regulated.

Mr. YOUNGER. Then you feel that it is prohibited under the present act, despite the fact that we have lots of testimony of the difficulties arising from these backhauls?

Mr. QUINLAN. No, sir. The backhauling, for-hire hauling, of agricultural commodities, livestock, and fishery products is not prohibited by the present act in view of section 203(b)(6), which exempts from economic regulation the for-hire transportation of such commodities.

Mr. YOUNGER. How about leasing your truck to a motor carrier for a backhaul?

Mr. QUINLAN. There is a prohibition of trip-leasing of trucks with drivers by private truck operators to for-hire carriers and there is a qualification in that which partially exempts leasing where agricultural commodities are concerned.

I don't recall the details of that particular exemption offhand. If you have a question with regard to that, sir, I would be glad to try to answer it or Mr. White or Mr. Creed, I am sure, would do so.

Mr. YOUNGER. No, except general.

I mean we do receive considerable complaint on the question of this backhauling by the private carriers and their infringement upon the common carrier traffic.

Mr. QUINLAN. When the backhauling is a bona fide incident of the primary nontransportation business of the private truck operator, we very definitely hold a brief for it, sir, because it is part of the nontransportation business, part of the private truck operation, and the Private Truck Council of America is enterested in preserving that right.

When the backhauling constitutes for-hire transportation, then it gets beyond the field of interest and concern of the Private Truck Council and we take no position on that one way or another, as to whether it should be exempted or regulated.

We leave that to the agricultural people and the others who are concerned with that for-hire transportation.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. Thank you, Mr. Chairman.

Sir, you object on behalf of your organization to the $500 civil penalty?

Mr. WHITE. Yes, sir.

Mr. DINGELL. Your principal objection appears to rely on the fact that, as you say, the Commission would have within its power the right to capriciously withhold prosecution or move against any carrier it chose without regard to any knowledge or intent on the part of the said carrier of any alleged or real violation. Is that correct?

Mr. WHITE. Yes, sir.

Mr. DINGELL. The Commission would still, however, retain its criminal rights?

Mr. WHITE. Yes, sir.

And there would be no objection to that.

Mr. DINGELL. The thing that concerns me here is this. We have, I am sure you recognize, a problem of enforcement.

Mr. WHITE. We do, sir.

Mr. DINGELL. You discussed earlier in your statement the problem of enforcement by a large number of courts without expertise in the matter?

Mr. WHITE. Yes, sir.

Mr. DINGELL. As a matter of fact, the courts in assessing or not assessing the civil penalty would essentially review the determinations of the Interstate Commerce Commission?

Mr. WHITE. They would not sir, in the sense that you have phrased your question.

Mr. DINGELL. So you would in a sense have full judicial review of the determination of the Interstate Commerce Commission. Would you not?

Mr. WHITE. No. We think it would be only to a very limited extent.

Mr. DINGELL. As a matter of fact, you would have the full protec-

tion of due process because of the requirement of due process imposed upon the courts?

Mr. WHITE. Due process, perhaps, but no official and formal Commission proceedings; but the point that we were trying to make was that this can occur all over the country in every Federal district court. The case would be brought by an Interstate Commerce Commission attorney or a representative of the Interstate Commerce Commission.

They would necessarily, and I would think naturally, be the one that would tend to explain the situation to the judge, in case of some area of conflict or some area of misunderstanding, as to how the Interstate Commerce Commission itself might or might not feel about it.

Mr. DINGELL. You are essentially recommending that they would make an ex parte representation to the judge?

Mr. WHITE. They couldn't help themselves.

Mr. DINGELL. You are an attorney. Are you not?

Mr. WHITE. Yes, sir.

Mr. DINGELL. Doesn't this fly in the whole face of our Anglo-Saxon jurisprudence and wouldn't, as a matter of fact, the judge hear both sides of the case before he made the determination?

Mr. WHITE. Of course he would, but he would not have the expertise of Commission proceedings before him nor would he have a qualified expert to represent the defendant.

Mr. DINGELL. He would have to?

Mr. WHITE. Of course he would, but only to the limited extent mentioned. We don't think that such a method of procedure would safeguard our operations nearly so much as if that area of conflict, when it is an area of conflict, were brought before the Interstate Commerce Commission and tried through its channels before it ever reaches the Federal judge.

Mr. DINGELL. Wouldn't this essentially happen under Interstate Commerce procedure before they would initiate the civil proceedings?

Mr. WHITE. No, sir.

Mr. DINGELL. Wouldn't they have to essentially make a determination with regard to whether or not there are grounds for civil forfeiture and won't they, as a matter of fact, have to have some form of hearing within the Interstate Commerce Commission before they could do this?

Mr. WHITE. No. It would merely be, as already occurs, as occurs now, as far as that is concerned, an investigative process by a fieldman which cannot come to the attention of those persons within the Interstate Commerce Commission, who would be expected to know all of the details or the ramifications of a problem of this nature.

Mr. DINGELL. You are alleging there would be no review by the Interstate Commerce Commission of a civil nature?

Mr. WHITE. Necessarily some review, but not the review that there is today. Of course they have to talk about it and decide between themselves, Shall we bring this case or not bring the case.

To that extent it would be reviewed by perhaps two, three men who are employees of the Interstate Commerce Commission. There would be no formal ICC proceeding at which all parties of interest would be present and properly represented.

Mr. DINGELL. Are you alleging to the committee, though, that there would be no formal processing within the Interstate Commerce Commission?

Mr. WHITE. There would not be a formal proceeding of that nature before a case——

Mr. DINGELL. Wouldn't you have the right to request a formal hearing of the Interstate Commerce Commission before they assessed this civil penalty?

Mr. WHITE. That is something beyond me. I don't know about it if there is that possibility.

Mr. DINGELL. If that possibility is here, then doesn't it necessarily follow that your objections to the bill with regard to the civil assessment penalty would then fall?

In other words, if you have the right to present evidence and to have a processing before the Interstate Commerce Commission before such civil penalty is assessed, then would not your objections to the bill dissolve?

Mr. QUINLAN. May I undertake to answer that, Mr. Dingell?

Mr. DINGELL. Please do.

Mr. QUINLAN. I believe the answer is that you don't have that right. I believe also that the objections to the proposed procedure are all of the reasons for the administrative process in our American system of law.

Because of the complexity of our economic system, because of the multiplicity and the complexity of our Government regulations, as you know, sir, the burden that fell upon the Federal courts was one that was impossible for them to sustain for many reasons.

In the first place, the caseload was one reason. The caseload in terms of the time involved in trying a particular case was another, especially in this field.

Mr. DINGELL. Aren't we getting away from our fundamental question?

Mr. QUINLAN. No, sir. I think this is right on the fundamental question, because these are the reasons why questions in the motor carrier field, which Congress found to be one of these regulatory fields in which the administrative process was needed, are so complex, are so time consuming, that the functioning of a specialized expert administrative body like the Commission, having primary jurisdiction, is needed in the first instance.

Now, it is true that recourse can be had to the courts, and necessarily so, as part of due process.

Mr. DINGELL. It would have to be, as a matter of fact, before the civil assessment became final, at least if the person begins, whom the action would be made so desired.

Mr. QUINLAN. The difficulty, sir, is that the courts need the primary jurisdiction, the functioning of a body like the Interstate Commerce Commission, in determining these broadly significant issues, with which we are concerned, of what is the permissible scope of private truck operation—to what extent is American business of all kinds, other than the for-hire transportation business, to be allowed to operate trucks.

If these go by way of first impression to all of the Federal courts, in our judgment, and we speak from experience because we partici-

pated in these cases, we don't think we would get an adequate hearing.

Mr. DINGELL. I have a very limited amount of time and I am trying to keep right to the fundamental issue. My question had to do with whether or not you would have the right on the civil assessment penalty to a hearing before the Interstate Commerce Commission.

Mr. QUINLAN. In my opinion the answer, sir, is "No."

Mr. DINGELL. In your opinion the answer is "No." Very well. Isn't it a fact, though, that the Interstate Commerce Commission has for a large number of years had the power of leveling civil assessments against other carriers than private carriers?

Mr. QUINLAN. No, sir. Only with regard to the recordkeeping and reporting requirements. If any such penalties have been levied, I am not aware of them, but even if they have, those are relatively simple questions.

They don't involve the basic, fundamental economic issues that we are concerned with.

Mr. DINGELL. They have had the power with regard to whether or not the individual adhered to his certificate of convenience and necessity?

Mr. QUINLAN. No, sir.

Mr. DINGELL. Have they had the power with regard to safety?

Mr. QUINLAN. No, sir. The civil forfeiture provision as it now is contained in the act, is confined (a) to common and contract carriers, and, with regard to them, is confined (b) to violations of the recordkeeping and reporting requirements.

Mr. DINGELL. That is all?

Mr. QUINLAN. That is all.

With regard to unauthorized operations or operations beyond the scope of authority, even in admittedly for-hire transportation, the remedy, or penalty, of civil forfeiture is not presently applicable.

The injunctive procedure is.

The procedure before the Commission itself, which may investigate upon application or upon its own motion, and may issue a cease-and-desist order, is available.

The criminal provision is available in flagrant cases.

Mr. BROTZMAN. Will the gentleman yield for just one question at this point?

Mr. DINGELL. I yield.

Mr. BROTZMAN. Do I understand correctly that presently the civil forfeiture provisions are not applicable to the unlawful operation?

Mr. QUINLAN. That is correct, sir.

Mr. BROTZMAN. Thank you, Mr. Dingell.

Mr. DINGELL. Just one more question.

You make no allegation that this is contrary to the Constitution or that this denies due process?

Mr. QUINLAN. We have so far made no such allegation, but I will state, however, that the penalty of civil forfeiture is regarded as such a harsh penalty by the courts that they exert themselves when possible to avoid or restrict its application, and for authorities, I refer you to the title "Forfeitures" in Corpus Juris Secundum.

Mr. DINGELL. More harsh than criminal?

Mr. QUINLAN. Oh, yes, because civil forfeitures apply to completely innocent and unknowing violations, whereas in the case of the crimi-

nal provision it is necessary to make a case of intent and knowledge, and this is why we are so much concerned in part about the civil forfeiture, although we are also concerned, and even more so, about the fact that these issues which should be centralized in the primary jurisdiction of the Commission, as they have been in the past, could pop up all over the country and we would not know about them until it was too late, nor would other interested parties.

Mr. DINGELL. Is your principal objection, though, that this really asserts Interstate Commerce Commission jurisdiction over private carriers? Isn't that a limit of your objection to this section?

Mr. QUINLAN. Well, yes and no. Of course, as to the safety regulations we have no objection. We cooperate actively with the Commission as to those, but when the Commission, if it should, or when others as they have, may attempt to stop nontransportation businesses from operating trucks in the bona fide course of those businesses without governmental permission, then, sir, we do object as we did in those cases in the past.

Mr. DINGELL. Thank you, gentlemen. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Keith.

Mr. KEITH. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

What would be your suggestion for your safety infractions? What should be done?

Mr. WHITE. We think we have already indicated, or hope we have indicated, that the application of section 5 of the particular bill would go a long way toward causing the enforcement of both safety violations and unlawful operations.

I think you were in the hearing room when two or three of the for-hire witnesses testified and each of them indicated that they thought there was a problem, just as perhaps many people think there is a problem, of enforcement, and it was their opinion that it could well be taken care of if the Interstate Commerce Commission had more personnel, more funds, and there was better cooperation between the Interstate Commerce Commission and the States, and in our opinion that is the method by which enforcement can be brought about.

Mr. ROGERS of Florida. What penalities would be involved under section 5 or safety violations?

Mr. WHITE. No penalties as such.

Mr. ROGERS of Florida. No penalties at all?

Mr. WHITE. No, sir. You have the criminal provision and the civil injunction that you presently have, but as far as section 5 concerns us, it merely tries to take care of a present loophole which forbids the Interstate Commerce Commission personnel from cooperating fully with State agencies or State authorities.

This would tend to allow them to cooperate fully and we think that is a good provision.

Mr. ROGERS of Florida. In other words, all safety violations should be handled as criminal violations?

Mr. QUINLAN. Or by civil injunction if they are persistent and intentional.

Mr. ROGERS of Florida. It would have to go through the injunction procedure?

Mr. QUINLAN. Or a fine could be levied, as many fines have been levied, but these are in cases where it is shown that the violation was intentional, as must always be shown in the case of a crime.

There is no penalty now provided for a violation which is completely inadvertent and innocent, whereas there would be such a penalty, a mandatory penalty, and a penalty with no discretion as to the amount, under the proposed provision.

Mr. WHITE. May I add to that?

Mr. ROGERS of Florida. Yes.

Mr. WHITE. With reference to the safety violation, the Interstate Commerce Commission has in many cases brought violators to Federal courts and caused them to be fined quite severely.

In one case I think it was in the neighborhood of $5,000 to $10,000 by reason of safety violations on criminal counts.

In other words, by proving wilfullness and intent on the part of the carrier.

Mr. BROTZMAN. Would the gentleman yield right there?

Mr. ROGERS of Florida. Excuse me. I think Mr. Hemphill asked me to yield. Then I will yield to you.

Go ahead.

Mr. HEMPHILL. Yes, sir. I am a little concerned about your endorsement of section 5 to give the power to the Commission to make cooperative agreements with the various States to enforce the economic and safety laws and regulations of various States.

I am not sure that the States have either the constitutional power or perhaps have the administrative personnel to perform the service that the Interstate Commerce Commission is supposed to perform.

Do you think the States have?

Mr. WHITE. I don't mean it to that extent. Of course, we can only read what we see in this provision and we think it is another enforcement provision which might be helpful, but we don't think that the States could particularly be bringing Federal action that would be unconstitutional.

Mr. HEMPHILL. Of course, it would be unconstitutional. For a State to try to enforce some law of the Congress, it seems to me, would be unconstitutional; wouldn't it?

Mr. WHITE. It would, but I think, as the chamber of commerce representative brought out, that there is a provision in the present act which more or less prevents the Interstate Commerce Commission representative sometimes from revealing information which he has in his files with reference to particular carriers.

This would allow him to reveal that information to State authorities so that they would have a total picture, so both of the two kinds of people could join together in causing proper and decent enforcement of the Motor Carrier Act.

Mr. HEMPHILL. Thank you.

I have some other questions.

I am taking Mr. Brotzman's time, so I yield back to the gentleman.

Mr. BROTZMAN. Go ahead. I will wait for a minute.

Mr. ROGERS of Florida. Go ahead. I yield.

Mr. QUINLAN. May I add a comment on the previous question, sir, just to put it as definitely as possible?

As we read section 5, it is confined to administrative and investigative cooperation. If it were more than that, in our judgment it would not be only unconstitutional but highly objectionable from a practical standpoint.

Mr. HEMPHILL. I thought that too, but I just didn't get that statement. Excuse me, Congressman.

Mr. BROTZMAN. If I understand the present law correctly, there are civil sanctions and also criminal sanctions. Is that not correct?

Mr. WHITE. That is right.

Mr. BROTZMAN. And as pertains to private truckers, they apply to safety factors, and I think you mentioned another, the recordkeeping part.

Mr. QUINLAN. No. My previous mention of recordkeeping and reporting was with reference to the requirements for for-hire carriers. The present civil forfeiture provision is applicable to those requirements as applied to for-hire carriers only. It is correct that the present act regulates private truck operators, or so-called private carriers of property by motor vehicle, only with regard to safety of vehicle operation, and any reports or other requirements that might pertain to private operators would, as we read the act, be only with regard to safety.

Mr. BROTZMAN. So that any of the other regulations that the private carriers might have would come from the State level. Is that not correct?

Mr. QUINLAN. Well, even at the State level I don't think that there could constitutionally be other; that is, economic, regulation.

This question was very thoroughly debated in Congress when the Motor Carrier Act, 1935, was enacted, which is part II of the Interstate Commerce Act, and the Senate debate particularly, I recall, emphasized the view that the Federal Government could not constitutionally apply economic regulation to the operation of trucks in nontransportation businesses.

Mr. BROTZMAN. Now, this gets down to the question of jurisdiction and I think perhaps a forum for the people that you are representing or those engaged in your particular business.

As to the administration of justice, and this is what we are really talking about here, I think there may be value to those that you represent to have a hearing at the local level before a court rather than to have the more centralized operation of the Interstate Commerce Commission? Do you understand my point?

Mr. QUINLAN. Yes.

In my judgment, that value would be an illusory one. It would be far overcome by all the disadvantages that would accrue from spreading these questions around among the Federal courts, and by "these questions" I mean especially the basic question of what is the permissible scope of the right of business, other than the transportation business, which is "touched with the public interest," to operate trucks without first getting permission of the Federal or State Government to do so.

Mr. BROTZMAN. But by answering the question that way you seem to admit in part that there might be some advantages to having a local forum for these people to have their cause determined in it.

Mr. QUINLAN. Lest I leave any doubt, let me say in my judgment there would be absolutely no advantage from a practical standpoint.

I see nothing but disadvantage. The advantage would be theoretical, and from my experience over the past 20 years in dealing with these matters, it would be wholly a theoretical and illusory advantage.

Mr. BROTZMAN. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Hemphill?

Mr. HEMPHILL. Thank you, Mr. Chairman. Are most of the members of your council regulated or unregulated?

Mr. WHITE. Unregulated.

Mr. HEMPHILL. Unregulated?

Mr. WHITE. Yes, sir.

Mr. HEMPHILL. These are the people that are uppermost in our concern with the transportation problems of today. Wouldn't you say that is true? If the industry is sick, as some have tried to portray here, it is because of the violations of the unregulated for the most part, isn't it?

Mr. QUINLAN. I think we need to clarify the nature of the people for whom we are speaking here, sir. They are not unregulated for-hire carriers and they are not part of the transportation industry.

The people who are members of the Private Truck Council of America are all kinds of business other than the for-hire transportation business.

Mr. HEMPHILL. I understand that.

Mr. QUINLAN. The bakeries, the dairies, and all the rest of them, and when we say they are unregulated, they are regulated as to their safety of operation, but for constitutional reasons, and reasons of policy, they are not economically regulated.

Now, they are concerned with the welfare and health of the for-hire transportation industry, as shippers, because practically all of them are important shippers, but their interests as shippers via for-hire transportation are not part of the function of the Private Truck Council of America.

The National Industrial Traffic League, to which many or most of them also belong, deals with shipper problems.

Mr. HEMPHILL. Maybe I misunderstood one of the problems we have here and I would like to be corrected if I do. As I understand some of the testimony, one of the problems that the carriers who are regulated for hire and who have certificates of convenience and necessity for, arises from the fact that these people who do not have the certificates and are not regulated are doing the hauling for hire under some guise or another, as everybody knows it is happening, and everybody knows that that is part of our problem here.

We are trying to cure it by this legislation and I am somewhat disappointed in some of the testimony I have heard because the best friend the transportation industry has in America is the Congress of the United States.

If we turned it all over to the Interstate Commerce Commission, you would tear your hair, if we just turned it all over to them and put everybody under it.

I am somewhat concerned that you seem to be basically opposed to H.R. 4701, because we are trying to help your interest.

If a man is opearting legitimately, enforcement is the best thing he can have. Like putting a man on parole for a criminal action, he says, "I don't want to be on parole." If he is going to violate the law, of course, he doesn't want to be on parole, but if he is going to obey the law and try going along with what the Congress intended safetywise, and permitwise, and otherwise, then he has no fear of enforcement, as I see it.

If he is going to obey the law, why is he going to worry about what the fine is going to be?

Mr. QUINLAN. What you say is basically true, but the practical difficulty in applying that is that it isn't a simple case of violation of economic regulation.

It is a case of for-hire organizations, both railroad and trucking, trying to have legitimate truck operations of other businesses, other than transportation, ruled to be in effect for-hire carriage, so they can stop those operations and take over the movement of the merchandise.

To be very specific, I know that this sounds fantastic and it seemed so to be at the beginning, this was precisely what happened in the *Brooks Transportation* case, which went to the Supreme Court.

The Lenoir Chair Co., in Lenoir, N.C., manufacturing furniture, delivering that furniture to its own customers in its own trucks, was claimed to be operating as a common carrier, and therefore in violation of the Interstate Commerce Act, on the ground that it made a delivery charge for delivering the furniture to its own customers; the railroads and the for-hire truckers said it was operating "for compensation" and therefore it was a common contract carrier.

A similar claim was made in the *Schenley Distilleries* case, because that company, engaged in the manufacturing and distribution of liquor, had a higher price delivered than it did at the plant.

This is what happens in these cases, and this is why completely legitimate private truck operators are concerned about the enforcement procedure, because these cases are made the vehicle for attacks on perfectly legitimate private operators.

We hold no brief for truly unlawful operations, and we have done everything possible to help educate private truck operators to the law and to their sense of responsibility, and we feel a pretty good job has been done.

We also feel that the provisions of the present act are more than adequate if they are intelligently and aggressively enforced.

The CHAIRMAN. Will the gentleman yield?

Mr. HEMPHILL. I would be happy to, Mr. Chairman.

The CHAIRMAN. What did the Commission decide in the two cases just referred to as an example?

Mr. QUINLAN. There were several stages, Mr. Chairman. The *Lenoir* and *Schenley* cases were finally consolidated in the *Brooks* case.

We had, as I recall, a favorable examiner's report in one, unfavorable in the other. The same thing happened—I am not certain—at the Division level.

There was a Division decision in each. Then, they were consolidated. They went before the entire Commission. The entire Commission ruled the operations in both instances to be private and the Federal Court upheld that decision, but we had considerable difficulty

in establishing that conclusion and we ran into some very formidable opposition.

Mr. HEMPHILL. Of course, the thing that bothers me is that everybody admits we have these illegitimate operations. Everybody admits that.

So, the patient is sick, but nobody wants the Congress to have the cure, because they say, "It might cause me some inconveniences," and yet the industry itself has offered no solution.

Mr. QUINLAN. I truly believe that those reports, sir, first, are highly exaggerated, and the inadequacies of the present procedure are highly exaggerated.

Mr. HEMPHILL. You thought a man said $14 billion worth of business?

Mr. QUINLAN. The trouble is all of these statistics are largely speculation. We get a lot of figures about ton-miles hauled by private truck operators. There are no such statistics in fact, except a few road checks, the legitimacy of which has been seriously questioned by experts.

We get a lot of generalized contentions about these violations, in the "gray area" and so on, but when we ask for specific cases we don't get any, except the specific cases that are being handled with no difficulty by the Commission. The Commission is holding them to be legitimate, or it is issuing cease and desist orders.

We truly believe that there is a great deal of exaggeration, in a desire to extend the field and the severity of regulation, which seems to be something that just naturally happens. Every time an industry is held to be touched with the public interest and becomes a regulated monopoly, the instinctive tendency of the industry itself, and the agency that regulates it, is to start reaching out and bringing still others under that regulation.

This is what has been happening under the Motor Carrier Act.

Mr. HEMPHILL. I thank you, sir.

The CHAIRMAN. Will the gentleman yield?

Mr. HEMPHILL. I yield the floor. I yield to you, sir. Yes, sir.

The CHAIRMAN. Are you saying to this committee for the record, sir, that there are no truck leasing arrangements by private carriage after the product has been delivered and in an effort to get some economy out of the operation on the backward movement?

Mr. QUINLAN. No, sir, I am not saying that, but I am saying that the question of what the law is under the present statute is not a difficult one to resolve, that counsel in most cases can easily give advice, and that the Commission can easily reach a conclusion and take enforcement action under the present provisions, and I did say also that I believe the number of such cases is highly exaggerated.

The CHAIRMAN. Well, it has been estimated, and there is some reference to the gray area in the statement of Mr. White, that there is some $5 billion a year of such illicit or questionable activity.

Mr. WHITE. That could be nothing more than a wild guess, Mr. Harris.

The CHAIRMAN. Whether it is 5 cents or $5 billion, are you saying that it does not go on?

Mr. WHITE. I am not saying that it does not go on.

The CHAIRMAN. That is the big question here and I think that is what Mr. Hemphill had in mind.

Mr. WHITE. It does go on.

The CHAIRMAN. It is going on and I know it is going on.

Mr. WHITE. Certainly it is going on.

The CHAIRMAN. And I know that they use these complicated leasing arrangements, long-drawn-out agreements, and go all away around the lot to get around it, which is going on all the time, and that has been going on I know, from my personal investigation through these hearings and committee activity, since prior to 1951.

What Mr. Hemphill has in mind, and I think it is most appropriate, is that you come here, and again appropriately so, define the true private carrier operation, but then you, as I gather from your discussion here, go all around the lot to explain why nothing should be done to get at this kind of operation which you will not say to this committee does not exist.

Mr. WHITE. We have said that the figures are exaggerated. That doesn't mean anything necessarily.

The CHAIRMAN. How do you know the figures are highly exaggerated?

Mr. WHITE. Among other things, there is no possible way of proving it.

The CHAIRMAN. That is what you say.

Mr. WHITE. And they will tell you that, also.

Mr. DINGELL. Mr. Chairman, will you yield?

The CHAIRMAN. Just a minute.

One of the big problems we have around here with all you people in the transportation business, whether it is common carriage, or private operation, or a particular mode carriage, or whatever it might be, is that I understand that you insist that we go along, just as Mr. Dingell tried to raise awhile ago, with the status quo; let everybody be aware that if we can get by with something we are going to do it.

In a free enterprise and competitive operation as we have, I am very strong for maintaining the opportunity to compete, but where there is so much allegation about the questionable acts that are going on, for each of you to come in here and say, "Let us maintain the status quo; let us do nothing about making it specific," if there is this questionable operation, gray area, illegal, whatever you want to call it, I agree with Mr. Hemphill that you ought to be among the people to come in and help get to the bottom of it and dig it out and do something about it.

I can't understand, as I told the truckers the other day, and the railroads last year, this kind of situation that exists if we are going to continue to maintain a strong common carrier transportation system which would lend itself to the legitimate, fine type of private carriage operation as was intended when this act was written, and I have just reviewed again what the Congress said at that time.

That is my comment to all of it, that you do little to help us, I am afraid, to really get to the bottom of the thing. What we are seeking is information and you, like so many of the others, are making it extremely difficult for us to have to cut through all this stuff and get into the roots of things in order to do what should be done to maintain the opportunity of each of these modes in common carrier transportation, to preserve your private carriage operation as it should be, and to improve and make even sounder the system itself.

Mr. WHITE. I am sorry we indicated that nothing should be done. I was trying to be positive about it. The council itself does a lot in this area with our weekly reports, our bulletins, and what not.

The CHAIRMAN. You come up with an explanation now as to why we shouldn't do anything, and use examples which I do not imply that you should not.

I would not criticize it. However, you use an example in which the Interstate Commerce Commission itself had said this is what it was and which could not have any effect whatsoever on the subject that was discussed here and which you object to.

If the Commission said that was a legitimate operation and upheld you in it, how can you complain about it?

Mr. WHITE. That is the exact procedure we would like to have retained, Mr. Harris, nothing more, nothing less, the procedure that you are referring to. That is how these things were determined in the original instance.

The CHAIRMAN. We are not going to change it, except in the amount, and the amount, whether it be 5 cents or $5 billion, won't have any effect.

Mr. WHITE. Did I understand you to say that those changes except the amount?

The CHAIRMAN. That is right.

Mr. WHITE. In our opinion, this is a very definite and drastic change. This is a change in a criminal violation to a violation which involves civil forfeitures.

Under the present circumstances which willfulness or intent must be proved. Under this particular provision a man can be completely innocent, have no idea that he has done anything wrong, and still be subject to a $500 fine.

The CHAIRMAN. Yes. A man can go out and get a shotgun and shoot somebody and say, "Oh, I didn't intend to do that at all. It was not intentional at all. You ought to let me go."

One extreme is just as bad as the other. That is what I am trying to say to you.

Mr. WHITE. Our main reason for suggesting this, however, is this does take away from the Interstate Commerce Commission its primary jurisdiction in matters of this nature.

That is the most important thing to us, not that a man is fined $500, or $1,000 or, what have you, but we would just prefer that the Interstate Commerce Commission still maintain jurisdiction in an area such as this.

We think that is best for industry and for private truck operators, which is industry operating its own truck.

The CHAIRMAN. It says that you shall forfeit to the United States such sums. Who is going to decide that?

Mr. WHITE. The district court judge. The Federal district court judge will decide that before the Interstate Commerce Commission has had an opportunity to have any proceedings relating to the particular problem.

The CHAIRMAN. In my State, and I assume it is the same in other States, if a person operates in violation of State laws, he is brought into the court of jurisdiction and it is there determined what should be done about it.

Well, anyway, I didn't intend to get into this. It just occurred to me with some of the problems we are having here that we are not getting the help that I think we ought to have.

Mr. DINGELL. Mr. Chairman, may I ask a question for information? You have indicated that the $5 billion figure discussed by our chairman and mentioned rather frequently in these hearings is excessive.

Can you help this committee by giving us an understanding of the amount of illegal back carriage, the illegal leasing, and so forth by private carriers?

Mr. WHITE. All I can suggest is we don't know and they don't know. It is a wild guess, in addition to the fact that the amount involves not only alleged illegal violations by private truckers, but it also includes the railroads.

It includes the for-hire truckers. It includes exerybody that relates to the transportation of commodities in inter- and intra-state commerce.

Mr. DINGELL. As a matter of fact, it is fair to say that there is a substantial amount of backhauling, illegal leasing, and so forth, by private carriers, is it not?

Mr. WHITE. Likewise by for-hire carriers.

Mr. DINGELL. I recognize this and we are trying to stop this. We are trying very hard to bring some order out of chaos that exists in the industry today.

I hope you won't take my comments as being unfriendly. I have some very strong views on it.

Mr. WHITE. Not at all.

Mr. HEMPHILL. If you will yield to me, it is sort of like speeding. They say it doesn't exist, and yet I can go from here to South Carolina in my car and I will be passed by at least 50 large vehicles that apparently have immunity from the speed laws, and I know from court experience that speed is the most dangerous thing you have on the highways.

It kills more people and causes more deaths.

Mr. WHITE. Stopping that can be done under the present law just as much as it can be under the proposed law.

Mr. HEMPHILL. I wasn't belaboring that point, but the industry isn't stopping it and the industry isn't helping us to stop it and it isn't helping us in this legislation.

Mr. QUINLAN. If I may add this comment, this is fundamental to what we have been trying to say, that every time a statute is violated it isn't an answer just to amend the statute and keep piling one amendment on top of another.

In 1958 the revised section 203(c) was offered and enacted to meet this very problem. We think the new proposal is a bad proposal and that the answer is the statute is adequate and it ought to be enforced and the Commission ought to exercise its responsibility in its field of primary jurisdiction.

Mr. HEMPHILL. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. White and you gentlemen for your appearance here and your testimony.

The committee will adjourn until 2:15 this afternoon when Mr. Joseph D. Hadley will be the witness.

(Whereupon, at 12:25 p.m., the committee recessed, to reconvene at 2:15, the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order, please.

Our first witness this afternoon is Mr. Joseph Hadley.

Mr. Hadley, I believe you represent the National Oil Jobbers Council?

Mr. HADLEY. That is correct, sir.

STATEMENT OF JOSEPH D. HADLEY, ON BEHALF OF THE NATIONAL OIL JOBBERS COUNCIL, INC.

Mr. HADLEY. Mr. Chairman and members of the committee, my name is Joseph D. Hadley. I am executive director and general counsel of the Michigan Petroleum Association with offices at 547 East Jefferson Avenue, Detroit, Mich., and I am appearing here on behalf of the National Oil Jobbers Council, of which Michigan is a member.

Ordinarily, testimony before this committee would be delivered by the general attorney, Mr. Otis Ellis, whom many of you know, but he is out of the country on business and asked that I substitute for him.

The National Oil Jobbers Council is a trade group composed of 34 State and regional associations of independent jobbers and distributors of petroleum products.

These associations, covering 41 States, represent the greater majority of the thousands of bona fide independent petroleum jobbers in the United States.

There is in my testimony a list of those 34 State and regional associations that we represent. Suffice it to say, I think that out of the 43 States which have State jobber associations, we represent 41 of them.

Following is a list of the member associations:

Alabama Petroleum Jobbers Association, Inc.
Arkansas Oil Marketers Association
California Oil Jobbers Association
Colorado Petroleum Marketers Association
Connecticut Petroleum Association
Empire State Petroleum Association (New York)
Florida Petroleum Marketers Association, Inc.
Fuel Merchants Association of New Jersey (jobbers division)
Georgia Oil Jobbers Association
Illinois Petroleum Marketers Association
Independent Oil Men's Association of New England (Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)
Independent Oil Marketers Association of Indiana, Inc.
Intermountain Oil Marketers Association (Idaho, Nevada, and Utah)
Iowa Independent Oil Jobbers Association
Kentucky Petroleum Marketers Association (jobber division)
Louisiana Oil Marketers Association (jobber division)
Michigan Petroleum Association
Mississippi Oil Jobbers Association
Missouri Oil Jobbers Association
Nebraska Petroleum Marketers, Inc.
New Mexico Petroleum Marketers Association (jobber division)
North Carolina Oil Jobbers Association
Northwest Petroleum Association (Minnesota and North Dakota)
Oklahoma Oil Jobbers Association

Oregon Oil Jobbers Association
Pennsylvania Petroleum Association
South Carolina Oil Jobbers Association
South Dakota Independent Oil Men's Association
Tennessee Oil Men's Association
Texas Oil Jobbers Association
Virginia Petroleum Jobbers Association
Washington Oil Marketers Association
Wisconsin Petroleum Association
Wyoming Oil Jobbers Association

Since some of the members of this committee may not be aware of what an independent oil jobber is and does, and for the further purpose of pointing out the relationship of the jobbers' operations to the effects of H.R. 4700, it is deemed necessary to define the term "independent oil jobbers," briefly describe the role these jobbers play in the distribution of petroleum products, and of equal importance to show in specific detail how this bill would or could adversely affect the jobbers.

An independent oil jobber is a person, partnership, or corporation that engages primarily in the sale of petroleum products, in bulk quantities, for delivery into bulk storage tanks.

Many jobbers own service stations which they lease to independent dealers and in turn sell products to these dealers as well as to dealers who own their own stations. The jobbers' sales, dependent on each individual jobber's type of operation, are wholesale or retail, and in most instances jobbers engage in both wholesale and retail sales, dependent on the definition of these terms.

The independent jobber owns his own bulk storage and transport facilities and even though the majority of them sell the branded products of a major oil company the jobber nevertheless is his own boss, provides his own financing, carries his own accounts receivable, and in all other respects is independent, as contrasted to commission agents and consignees who are sometimes used by major oil companies for wholesale distribution of their branded products.

Independent jobbers distribute approximately 30 percent of all gasoline delivered to the service stations of the country, well over 50 percent of all bulk petroleum sales to farmers, 85 percent of home heating oils, and more than 50 percent of the imported residual or commercial fuel oils.

In addition, jobbers sell to what is known in the trade as commercial consumer accounts.

The very nature of bulk petroleum sales requires that the seller either make delivery or arrange for delivery of the product into the storage tank of the reseller or consumer customer.

It is this type of merchandising that has caused the jobber to be referred to as a "merchant on wheels." The average jobber, who sells both gasoline and fuel oils, owns a bulk storage facility in which he stores his inventory of products.

In addition, the average jobber owns one or more large tank transports—the number of transports being determined by (1) the volume of the particular jobber's business, (2) the distance between the jobber's bulkplant and his supplier's terminal, (3) the volume of the jobber's business which requires transport deliveries, and (4) the volume of product he hauls for others.

Supplementing these large transport facilities the average jobber owns one or more "tank trucks" which are the smaller capacity trucks used for redistribution of products to homeowners, farmers, country grocery stores, some service stations, and other customers whose tank storage capacities are not large enough to take a tank transport load of product.

The jobber uses the larger tank transports to haul his product from the supplier's storage terminal to either the jobber's storage facility or direct to such of his customers that can take transport deliveries.

Most jobbers do not have ICC permits or certificates since they only haul their own product, which they resell to their customers, although some jobbers are certificated by ICC and in addition to hauling product for themselves also haul products for others subject to ICC rates and other regulations pertaining to certificated haulers.

The volume of business of some jobbers is too small to warrant ownership of a tank transport truck, in which instance these jobbers purchase their product from the supplier on a delivered basis, the supplier using a contract or public hauler who is certificated by either ICC or a State commission which supervises intrastate hauling transactions.

In the case of the jobber who operates his own transport for picking up his purchases from the supplier's terminal, the supplier pays the jobber a hauling allowance which is usually related to the ICC or State rate for the route, distance and volume of the load transported.

Many jobbers make a slight profit (a fraction of 1 cent per gallon) on this haul from the supplier's terminal, while others may break even and some few lose money, dependent on whether or not the jobber's volume of business is adequate to make maximum use of the large tank transport facilities.

As a matter of fact, were it not for the slight profit made by jobbers on the hauling allowance many of them would have been in serious financial difficulty as a result of the gasoline price wars which have been plaguing most sections of the Nation for the past 18 months, in which price wars the jobber at best is lucky to be breaking even on the sales end of his business.

With this background in mind, let me now relate the implications of the bill before this committee to the jobber's operation. The bill, among other things, provides that authority for establishing minimum rates on the transportation of liquid commodities in bulk will be removed from the Interstate Commerce Commission.

We are advised that the principal proponents of this bill are the Nation's railroads. It is our opinion that if the authority to establish minimum rates is removed the inevitable result will be a rash of transportation rate wars for hauling petroleum products. How will this affect the jobber?

In the first place, the jobber does not have enough profit margin on his hauling allowance to start a rate war, much less stay alive in the midst of one if started by competing haulers.

We believe that the pressure from shippers of petroleum products on certificated carriers will be such that the transportation rate dike will rapidly erode and crumble and rate wars as between these carriers will become rampant.

Those carriers with less resources will be driven to the wall by those with greater resources, thus minimizing competition in the field of petroleum transportation.

As the rates of certificated carriers go down, as a result of the price wars, jobbers' suppliers will in turn ask them to haul the product for the lowest available rate and if the jobber is unwilling or unable to do this the supplier will then begin to sell to the jobber on a delivered basis, leaving the jobber with tank transport facilities which he cannot utilize, or at least for which he has only a limited usage which is insufficient to economically amortize the investment in such facilities.

Those jobbers who are certificated carriers are small as related to the larger transporters and they would find themselves, like other smaller transporters, forced to the wall by competition with resources large enough to ride out a prolonged rate war in transportation. Thus these jobbers, too, would find themselves with thousands of dollars' worth of transport equipment which they could not economically justify.

Now, how would the railroads profit from the oil jobber or small certificated hauler being driven out of this phase of petroleum transportation? The answer, in our opinion, is that they would profit but little, if anything at all. The reason for this is quite simple.

The supply terminals of the large suppliers of petroleum products have in recent years been located adjacent to water or pipeline transportation points and no longer are the railroads utilized to a significant degree for primary transportation of these finished products.

Likewise, the jobbers' storage facilities are no longer located on railroad sidings but to the contrary have been located with a view for utilizing truck transportation both to and from the jobbers' storage facilities. Certainly the jobber cannot afford to move these facilities again to a railroad siding or if such became necessary the jobber would have to reflect these added costs both from relocation and from increased costs for redistribution in the ultimate selling price charged the consumer.

For some types of transportation of petroleum products maybe the railroads would pick up some business but it would not be the tributary type of transportation which is now performed by the jobber. The railroads would at best pick up some primary transportation—and by primary I mean the transportation to the supplier's terminal as contrasted to the secondary transportation now performed by the jobber or certificated haulers from the supplier's terminal to the jobber's storage facility.

The committee might properly ask this question: If transportation rate wars on petroleum products developed, would it not result in lower costs for such products to the consumer to the extent of the decrease in transportation costs?

In my opinion, the answer to that question is a definite "no." The reason for that answer is this: In my judgment whatever savings might be effected in transportation rates as a result of a price war would be taken by those companies supplying petroleum products and the delivered price to the jobber and the ultimate consumer would remain unchanged.

In brief, the savings effected would be added to the profits of the supplier and not passed on to a consumer of petroleum products.

There are approximately 12,000 independent petroleum jobbers in the United States. Slightly over 50 percent of this number own one or more tank transport units. Each of these units costs several thousands of dollars. If transportation rate wars break out as a result of the passage of H.R. 4700, I do not believe there is a single one of these jobber-owners of transport units that could continue to econonomically justify running those transports if the rate dropped as much as 10 percent and many of them could not stand any reduction whatsoever.

I would further estimate that less than 20 percent of the jobbers' tank transport units are completely paid for with the balance due on purchase prices being secured by conditional sales contracts or chattel mortgages.

The end result of driving the jobber out of that relatively small part of petroleum transportation that he engages in would produce one of the greatest mass sales of tank transport units that the Nation has ever seen and the courthouse steps of the county seats of this Nation will be cluttered with auctioneers selling these units to satisfy the unpaid balance of the purchase price.

I am unaware of anyone who is getting rich in the business of tank transportation of petroleum products. The ICC minimum rates serve as a floor which tends to protect the small from the pedatory practices of the large. The existence of these minimum rates also provides a maximum of competition which in turn precludes excessive rates being changed.

I find it difficult to see where any good which would be produced from the passage of this bill, as related to tank transportation of petroleum products, would in any measure offset the adverse results, both for the consumer and those engaged in this type of transportation.

That concludes my remarks, Mr. Chairman, and I thank you for your patience.

The CHAIRMAN. Thank you, Mr. Hadley, for your statement.

I would like to recognize the gentleman from Michigan, Mr. Dingell, at this time who wanted to make a comment.

Mr. DINGELL. Thank you, Mr. Chairman.

I am particularly pleased to welcome to the committee an old friend of mine, Joseph Hadley, who was a friend of my father's before me, a distinguished attorney of our city and State. He is a fine representative of the fine group of independent businessmen who has a distinguished record as counsel and is advisor to the Michigan Petroleum Association.

I can commend him personally and his testimony very highly to the committee.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. Friedel?

Mr. FRIEDEL. No questions.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Hadley, it is difficult for me to see where the railroad competition is very much competition to the jobbers. You make general statements. Can you give us a specific example of where the railroad and the transport are in real competition?

Mr. HADLEY. Well, of course as I said at the outset, my experience is largely in the area of Michigan but there is no real competition between the motor transports and the railroads in the transportation of petroleum products even now.

Mr. YOUNGER. And our only problem is the decrease or the elimination of the minimum rates.

Would you say if the rates are eliminated it would ruin all these companies? You admit there is no competition now.

Mr. HADLEY. What I am saying, what I suggested, Mr. Younger, was that if the minimum rates are eliminated and there is no longer a floor in ICC rates for the transportation of petroleum and other bulk commodities, that even the motor transport carriers are so hungry for business that we are completely concerned that there will be a rate war involved even among those, not necessarily between the railroads and the motor transporters, but even between members of the motor carriers, and that is where we feel we are going to be hurt.

I only mention the railroads because there is a file in our office from various railroads suggesting that we support this measure. I have it on good authority that they are proposing this bill.

As between railroads and motor transports, common carriers, there is no real competition in Michigan and in most other areas that I know of. We are fearful that even among the motor transports, the common carriers operating motor transports, there will be a terrific rate war started if these floors are reduced.

Mr. YOUNGER. You mean just between the motor carriers themselves?

Mr. HADLEY. Yes. They are all desperately hungry for business, and it would only take one small decrease by one of them to be met by others and then the toboggan slide starts.

We are also afraid that if Congress passes this bill it would spread then to the several public service commissions of the several States.

So those of us who are hauling products from our supplier's terminal intrastate would then be affected.

Mr. YOUNGER. Do you think that the elimination of the minimum rates by the railroads will start a war between the railroads?

Mr. HADLEY. I can't answer that question. I am not familiar enough with railroad facilities, and I know that they don't play much of a part in the transportation of petroleum products at the secondary level.

I don't know, frankly, in Michigan the last 10 years of a pipeline terminal or a marine terminal or a jobber's bulk plant that has been built adjacent to a railroad for that purpose.

It may find itself there because that was a good piece of property but they were not looking for a railroad siding area.

Mr. YOUNGER. That brings up a rather new point. We have not had so far any witness complaining about the possible reduction of minimum rates or the elimination of minimum rates creating competition between motor carriers.

This is the first witness of this kind that we have had as I recall, Mr. Chairman. This brings in an entirely new element.

That is all, Mr. Chairman.

The CHAIRMAN. Well, I think the record shows specifically that representatives of other motor carriers have made it clear how they

felt about the situation just as Mr. Hadley has with reference to the oil jobber.

Mr. YOUNGER. It has been competition with the railroads, not the internal competition between motor carriers, as I understood the testimony.

Mr. HADLEY. That is our biggest fear.

Mr. YOUNGER. Yes.

The CHAIRMAN. You were speaking to the transportation of petroleum products by motor transport?

Mr. HADLEY. That is correct.

The CHAIRMAN. That is your concern?

Mr. HADLEY. That is correct.

The CHAIRMAN. You did not get into the question of what should be done with the water carriers?

Mr. HADLEY. No, we are not familiar with that.

The CHAIRMAN. Thank you very much, Mr. Hadley. We appreciate your testimony.

Mr. HADLEY. Thank you.

The CHAIRMAN. Mr. D. H. Wilson.

Mr. Wilson, you may proceed.

STATEMENT OF D. H. WILSON, MILLERS' NATIONAL FEDERATION

Mr. WILSON. Thank you, Mr. Chairman.

My name is D. H. Wilson. I am executive vice president, Eckhart Milling Co., Chicago, Ill., and chairman of the Millers' National Federation Transportation Policy Committee.

I should like to state parenthetically that the statement I am presenting was arrived at by a special study group of the milling industry. It was not made up by rate attorneys or traffic technicians and we shall try to avoid the technical details which have been well cared for by many transportation attorneys.

This committee was made up of management. It was made up, too, of mills of all sizes and of all geographic locations.

It is endorsed by the policy committee for the total industry by a good many mills whose immediate self-interest might possibly indicate a different course.

We believe it represents the best policy for the orderly marketing of wheat and its products.

The Millers' National Federation represents flour millers who purchase approximately 50 percent of this country's annual wheat production and whose mills manufacture about 90 percent of the Nation's wheat flour.

There are 553 flour mills located in 40 States with aggregate daily capacity of 1 million hundredweights of flour which accounts for 650,000 minimum carloads of flour, 17 million tons of inbound wheat and 4 million tons of byproduct, annually. Capital investment of the industry is about $1 billion, plus an untold amount in country elevators, subterminal elevators, and terminal markets. The annual value of shipments produced by the industry amounts to $2 billion.

The U.S. Department of Agriculture, Agricultural Statistics for 1961, reports wheat produced in commercial quantities in 41 States, which on the surface would seem to indicate some correlation between

the number of States producing wheat—41—and the number of States having mills—40. However, about 70 percent—668,124 hundredweights—of the industry's capacity is located in only 10 States, of which all but 2 also produce substantially large quantities of wheat.

Of these 10 States with major milling capacities only 3 may be termed "densely populated," and, therefore, generally speaking, it can be said the Nation's wheat is produced in the sparsely populated States at great distances from major population and consuming areas, and that the preponderance of flour milling capacity is located at or in close proximity to the wheatfields.

The animal population of the country is in the sparsely populated areas and generally lies between the wheatfield and the city. Therefore, the market for our millfeed byproduct—and that is about 30 percent of our milling grist—is between the wheat-producing areas and the flour-consuming cities. If such violence is done to the rate structure so that mills must be relocated in population centers, costly backhauls would be necessary to get fed back to the animals, which in turn would increase the cost of not only millfeed but also meat, eggs, and dairy products to the consumer.

The location of flour mills, in relation to their raw material source, has aided materially in the orderly marketing of wheat, and the high degree of competition within the industry has done much to assure the farmer not only a ready market but, likewise, maximum prices for his produce. Specifically, the farmer, whether he be a large or a small producer, has a ready market for his wheat at country elevators in his hometown; at subterminal elevators somewhat more distant; or at the large terminal or price-registering markets.

The market price the farmer receives for his wheat is determined by the futures or terminal-market price, less the freight and handling costs. The prices he receives are directly affected by the transportation costs of reaching the market he selects—costs over which the Interstate Commerce Commission now has regulatory powers with respect to minimum, maximum, and specific rail charges. He has a known, stable price, because his railroad costs are regulated.

Such stability in transportation costs is essential to the effective operation of the futures market. It is the necessary "common denominator" in futures trading, as you cannot have an element of uncertainty in freight rates and a workable futures market—they are incompatible.

In addition, present mill locations have:

1. Encouraged the construction of wheat storage facilities near the wheat fields, thus facilitating movement of the crop during harvest periods through short transportation hauls, with expeditious return of equipment to wheat-gathering stations in the country. This also permits evaluation of wheat for specific end use, and thus allows the producer to obtain maximum price for his grain.

2. Kept millfeeds, the principal byproduct of flour milling, near the livestock and poultry producer, and thus kept its price comparatively low.

3. Promoted the agricultural economy of small towns near the wheat fields.

In turn, these factors have resulted in the building of milling capacity at the natural crossroads of the country's transportation system, or

the natural gateways in the flow of wheat from the producing to the consuming areas. Relative nearness to wheat areas, and accessibility to the big wheat markets—these are the factors that determined flour mill locations for more than a century. The only exception is Buffalo, a special case due to milling Canadian wheat in bond, and to advantages that developed in later years from Great Lakes transportation of wheat.

Revolutionary and beneficial though the creation of the railroad system was, it nevertheless also generated grave problems. During the first half century of the railroads, there was no system of rates such as we now know. The cost of shipping a commodity in those days was usually a subject of negotiation between the carrier and the shipper. This led to all sorts of abuses. Rates to different shippers for the same service varied widely. A favored shipper might be charged only half as much as his competitor, or even less. All railroads had their "pet" shippers, but doubtless as much of the blame belonged to the shippers as to rail officials.

Again, parenthetically, I say there is a record back in the 1880's where the flour mills of St. Louis banded together and offered to guarantee their total annual shipments of flour to the Eastern seaboard to the railroad which would make them the lowest bid.

Large shippers did not hesitate to pressure carriers into outrageously discriminatory practices. Order came out of the chaos of negotiated rates after the passage of the Interstate Commerce Act in 1887—which required the publication of rates available to all shippers—and the amendments of 1906.

The Commission, under the powers now conferred upon it by the Interstate Commerce Act, and after extensive investigation in public hearings, has largely prescribed the rates, routes, and services incident to the transportation of grain, flour, and other grain products—and, in doing so, has recognized the need of providing reasonable and nondiscriminatory relationships in rates from the widespread grain-producing areas to the many storage and processing points, and ultimate areas of consumption.

Of paramount importance is this complex grain-rate structure, in the maintenance of equal rates on wheat and flour, coupled with "transit arrangements," which, together, create equal transportation costs for all processors—whether they be located adjacent to the grain fields, in consuming areas, or between the two. This equality of transportation costs accounts for the intense competition within the industry, which, in turn, assures maximum grain prices for the farmer as well as maximum services and minimum flour prices for the consuming public.

Each miller's success is therefore dependent on his skill as a miller and a merchandiser, rather than by some unknown advantage in transportation rates.

We in the industry share the belief of Commissioner Rupert L. Murphy, as expressed in his statement of July 10, 1962, before the House Committee on Interstate and Foreign Commerce on H.R. 11583, in which he stated:

We believe that in this type of case (grain rate adjustment) it would be difficult to guard against unlawful discrimination without the power to eliminate such discrimination, wherever found, by the prescription of minimum as well as maximum rates.

We sincerely believe the greatest threat to the milling industry, and the railroad industry, is directly attributable to the agricultural exemption accorded highway carriers and the bulk exemption accorded water carriers. The endeavors of the railroads to meet the competition of these unregulated modes of transport, sanctioned to some degree by the Interstate Commerce Commission as will be shown in a later example, are slowly but surely jeopardizing a rate structure which has been developed over years of investigation by the Commission, and which, for the most part, has been responsive to the needs of the industry.

The extent of this jeopardy can best be illustrated by a specific example. Recently the Interstate Commerce Commission approved the establishment of so-called "nontransit" rates on grain within the southern district. We feel that the railroads requested these rates in order to meet unregulated competition, and that these and others were sanctioned by the Commission in an effort to keep the railroads competitive with truck and water transportation, over which the Commission has no control.

Prior to the establishment of these reduced rates, all millers using wheat purchased on the Kansas City, Mo., market were required to pay transportation costs of 78½ cents per hundredweight from Kansas City to Atlanta, Ga.—irrespective of whether their mills were located in Kansas City, Atlanta, or some other location on authorized routes to Atlanta.

Again, parenthetically, I say there is no milling processes in Atlanta, and we chose that deliberately because we didn't want to pinpoint any specific mill.

Usage of the nontransit rates for the grain haul within the southern district accords a miller with processing facilities at Atlanta aggregate costs of 48.65 cents per hundredweight, whereas millers at Kansas City or those located on, or west of, the Mississippi must continue to pay 78½ cents per hundredweight, merely because their location precludes movement of wheat, as such, within the southern district.

Millers in the South, at locations other than Atlanta, are likewise at a disadvantage, depending upon the distance their processing location permits them to move wheat, as such, at the reduced wheat rate. This type of situation cannot be avoided, unless the Commission is given regulatory authority over all modes of transportation.

It seems readily apparent that, with flour sales often made, or lost, on price variations of 1, 2, or 3 cents per hundredweight, the Kansas City flour miller cannot hope to compete in the Atlanta flour market, and that, conversely, the Atlanta miller, through this type of ratemaking, is accorded an advantage which assures him a virtual monopoly in the Atlanta area. Extension of this ratemaking principle will surely render many storage and mill locations, and the investments therein, uneconomic.

This is a most dreary outlook for an industry which has progressed from the purely local grist mills of our early history to a major basic industry which has and continues to contribute so much to the welfare of the Nation, its people, and the transportation industry in particular.

In the opinion of our members, as businessmen as distinguished from transportation experts or commerce attorneys, we believe the very existence of our industry to be threatened by the freedom from regulation accorded water and highway carriers under the existing so-called bulk and agricultural exemptions, and that any extension to the railroads of exemption from minimum rate regulation would merely be compounding the problem—for we are confident the proposed legislation of H.R. 4700 would take away from our industry, and the public in general, much of the effective protection now afforded against discriminatory practices of the railroads.

In the light of the foregoing, our industry feels that it must be certain that the Commission has the power to eliminate any discriminatory or preferential treatment of the prescription of minimum and maximum rates.

In President Kennedy's original transportation message, he offered the alternative of either extending regulations or of deregulating the railroads.

For the protection of our industry, and in recognition of the untenable position of the railroads in their endeavors to compete for traffic exempted as bulk commodities for the waterways and exempted as agricultural or fisheries products for the motor carriers, we therefore strongly support the recommendations of the Interstate Commerce Commission with respect to repeal of section 303(b) of the Interstate Commerce Act, and a limitation on the transportation of exempt commodities under section 203(b)(6) of the act, which we understand are embodied in S. 925 and S. 926.

This is the end of our presentation. We thank you for your time and patience.

The CHAIRMAN. Thank you, Mr. Wilson.

Mr. Hemphill?

Mr. HEMPHILL. Thank you, Mr. Chairman.

I would like to ask you, sir, if H.R. 4700 was passed, would the price of bread go up or down?

Mr. WILSON. I would have to restrict my statement there because I am not a baker, but it is our feeling that the costs of flour to a bakery would rise and to the extent that he had to reflect it in the price of bead, I suspect the price of bread would rise.

Mr. HEMPHILL. You mean, if we pass this legislation we are doing that to the consumer?

Mr. WILSON. We think so.

Mr. HEMPHILL. All right, sir. Now you talked about pet shippers. I was talking in the committee here yesterday, I believe about pet shippers and I have a letter from Greenville, S.C., in which certain rates were given to people on a particular railroad which is going to put a fellow who is not a pet shipper out of business.

Now what is your thinking on that?

Mr. WILSON. May I make a presumption, sir? Are you referring to the so-called big john rate on the Southern Railroad?

Mr. HEMPHILL. No, sir; this is a fellow who is in the concrete business.

Mr. WILSON. Well, all right. In general yes, I would have to say that our opinion is that under a complete deregulation it would be highly possible for one railroad to make a rate on some commodity

to the shippers on his line and some other railroad not to make a corresponding rate on his line and that would be pretty hard on the shipper or the receiver who was on the line where the rate was not made.

Mr. HEMPHILL. I am somewhat disturbed because I have heard all these trucking people say that the railroads could do this and I did not believe it. Now they are doing it. Now, this is a matter of fact here.

Mr. WILSON. Would you like me to comment further on that, sir?

Mr. HEMPHILL. That is the reason I said this, sir.

Mr. WILSON. I don't quite get the context of what you said. I want to be responsive.

Mr. HEMPHILL. This fellow said in his letter, even though he does not come in my district:

> I am writing this letter to officially protest the cutthroat half price freight rates put into effect in this part of the State. The rate would financially ruin our business because we could no avail ourselves to it at either of our three plants; we are not on the railroad.

So if you are a customer of a railroad you get the benefit; if you are not, you get put out of business. Now what about this?

Mr. WILSON. That is entirely possible. There are many applications for special rates being made now. It is bothering the life out of all of us because every morning you have to look to see if there is a new application for special rates from one town to another town, disregarding the standard pattern or the uniform pattern of ratemaking throughout the country. Heretofore rates have been whether we like the level or not, an entirely separate question.

They might be too high or too low, we do not presume to judge that, but heretofore rates have been equitable throughout the country. We greatly fear that under this present proposed legislation ratemaking will get to be a hit or miss and that such things as you have just mentioned will become common.

Mr. HEMPHILL. I just wondered if somebody was slipping the Congress a mickey. I mean frankly I am much disturbed by this because this is a businessman in my State and if he is disturbed, I am disturbed, even though he is not my constituent and I have no stock in any railroad and no stock in any business concern that is involved.

Mr. WILSON. Sir, it is our opinion that without minimum regulation that sort of thing can burgeon very much.

Mr. HEMPHILL. Suppose we took the alternative and put everything under the ICC, how could you feel about that?

Mr. WILSON. That is exactly what we should like to see done.

Mr. HEMPHILL. If you had had the experience as I have had on this committee seeing the ICC just blatantly abort the intent of Congress, you would be suspect of that, I am sure.

Mr. WILSON. I suspect that there might be congressional redress for that if that is happening, and I do not deny that it is.

Mr. HEMPHILL. They will tell you one thing today, you pass the law and tomorrow they will do the opposite.

Mr. WILSON. On the other hand, they are an administrative body and they are charged with daily supervision of transportation. It would be almost impossible for legislation to stay constantly abreast

of the rapid changes in transportation, I believe. Now you gentlemen here might make a law today that would be ideal and would reflect equity throughout the country, and 6 months from now you might have to go through all of that all over again if we were trying to legislate specifics. I have no brief, necessarily, for the ICC except that it is an operative branch that should be responsible and responsive to the Congress.

Mr. HEMPHILL. I wish it were responsible or responsive, sir.

Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Wilson, the water transportation is exempt from regulation of transporting grain; isn't that right?

Mr. WILSON. That is correct.

The CHAIRMAN. You are speaking to the experience of your operation in the Midwestern States primarily; aren't you?

Mr. WILSON. That is where our plant is located, Mr. Chairman.

The CHAIRMAN. And you are quite concerned about what would happen to the flour mills in the Midwest?

Mr. WILSON. Yes, we are. We would be less than honest if we did not say that we are concerned about the investment of flour mills.

The CHAIRMAN. Now that being true, are you talking about a flour mill in Atlanta? I assume there is a flour mill in Atlanta.

Mr. WILSON. No, sir, there is not.

We deliberately chose that because very frankly, in making a rate example we chose a place where there was not a flour mill because we do not want to pick on anybody.

The CHAIRMAN. Is there a flour mill in Mobile?

Mr. WILSON. No, sir.

The CHAIRMAN. Is there a flour mill in New Orleans?

Mr. WILSON. No, sir.

The CHAIRMAN. Is there a flour mill on the Mississippi below St. Louis?

Mr. WILSON. On the Mississippi, no. However, there are flour mills on water below St. Louis that are fed from the grainfields of the Midwest by the Mississippi. There are flour mills at Decatur, Ala., and Chattanooga, Tenn.

The CHAIRMAN. All right. Are there any flour mills in Pittsburgh?

Mr. WILSON. No, sir. There is one under discussion but there is not one there.

The CHAIRMAN. Well, now, if water carriers have been free of regulation and we have barge facilities available out of the grain producing areas into various sections of the country and you have not experienced what you are fearful of, how do you explain the fact that these mills have developed the area of the country on the waterway?

Mr. WILSON. They are to some extent and again Congressman, I would like to make this point, and I have not made it up to now. There are going to be some changes in mill locations.

The CHAIRMAN. But you have some in Chicago and the lakes.

Mr. WILSON. Not on the lakes but there are two mills in Chicago, less than there used to be, by the way. There are going to be mill structures built in population areas.

The CHAIRMAN. In other words, you are ready to admit then that regardless of what happens to this problem there are going to be adjustments made because the population situation in the country is going to require it?

Mr. WILSON. If you will pardon me for being a little bit of a stickler, I would like to avoid that word "admit." I should like to state, rather than admit that there will be such changes and alterations.

The milling industry I think historically has shown a perfect willingness to change with the times. This is self-evaluation perhaps but we do not think that we are obstructionists.

The history of this industry shows that we do go where our services are needed.

The CHAIRMAN. I don't imply that you are obstructionists at all. I am trying to get your reasoning.

Mr. WILSON. There will be changes, sir; but our point is this: We do not believe that arbitrary ratemaking such as is likely to occur should be allowed. It happens that my mill is not one of these that I am concerned about because I am in Chicago. I do not have a large mill, and the population area there, if wheat can be got to Chicago I will have plenty of wheat and plenty of business.

The CHAIRMAN. Has there been arbitrary rates experienced in the hauling of grain by bargelines?

Mr. WILSON. By bargelines, yes, and they hurt and we don't like them.

The CHAIRMAN. Well, now, suppose we strengthen the provision which says that there shall be no discrimination and to provide that a just and reasonable rate will mean what it says.

Mr. WILSON. I am not sure what you are reaching for and I don't like to respond until I understand.

The CHAIRMAN. Well, suppose sections 2 and 3 of the Interstate Commerce Act with reference to preferences and advantages, and you know what that means, discriminations, monopoly, and so forth, would be extended to where the Commission would say that arbitrary low rates would not be permitted because it would not provide a compensatory item. We have that provision and the word is used as far as joint and free rates are concerned.

The fourth section there uses the word "compensatory."

Mr. WILSON. We should like to establish a——

The CHAIRMAN. As long as a rate is truly compensatory and can be economically provided, you could not object to it, could you?

Mr. WILSON. May I ask this, Mr. Chairman?

The CHAIRMAN. I am asking the questions now, not answering them. I am trying to seek information myself.

Mr. WILSON. No, we could not very reasonably say that if discrimination is avoided we would have any objection. I do think that the question I was trying to ask would have been responsive and leading to responsiveness to your question, sir.

The CHAIRMAN. Well, you can ask the question, I don't have to answer it.

Mr. WILSON. No, you don't.

The question I was about to ask, and it is important to our industry, is whether there is a responsibility on the part of all public transportation to make its advantageous rates based on advanced technology

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available to all shippers? That is essentially what we want. We do not care whether the barges or the trucks or the rails make the rates. We simply want a uniformity of pattern and an availability to the entire shipping public.

The CHAIRMAN. Well, of course, if they knew what you meant by that, I knew what you meant by it, and if you knew yourself what you meant by it, why we might discuss it.

Mr. WILSON. With your permission, then, I shall start with the last assumption.

I think I do know what I meant by it and I shall try to make that plain.

I am referring to special rates that are currently proposed on special types of rail equipment. The rail equipment is not in the possession of railroads in quantity to satisfy the entire shipping demand on the individual railroad or certainly not on all the railroads. Is there propriety, then, in a special rate being made for special equipment unless and until that special equipment is available to all who would like to use it? I refer specifically to the big-john rate of the Southern Railroad, and they don't happen to bother me much because I am not shipping there, but they don't have enough of those cars to serve all the people who might want to use them.

The CHAIRMAN. I was going to ask you about that to see just how important are these transit privileges.

Mr. WILSON. They are very important. Not just to us but they are important to the feeders of the country, the people who feed the animals, they are important to the consuming public.

The CHAIRMAN. That is the next question. If wheat comes to the mill, should it be exempt under the bill?

The flour into which it is processed could not be exempt, could it?

Mr. WILSON. It has not up to now. Flour can, however, be shipped in bulk and there is very modern bulk-car equipment that can handle flour, and we have not noticed any of the railroads hastening to make low rates on flour because they have new and modern equipment.

The CHAIRMAN. Suppose you would make arrangements under an exemption, that it would have to be to ship the flour in bulk.

Mr. WILSON. We do ship a good deal of flour in bulk and we get no special rates.

The CHAIRMAN. You use the railroads and they are not exempted.

Mr. FRIEDEL. Do you ship by truck?

Mr. WILSON. We ship by truck.

The CHAIRMAN. On the short hauls?

Mr. WILSON. Yes.

Mr. HEMPHILL. Would you yield at that point, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. HEMPHILL. Are you saying to us today that if we passed H.R. 4700 that there is not sufficient equipment available now or in the immediate future to help the consumer? You almost said it. Now are you saying it?

Mr. WILSON. I do not think I want to say that. What I did say was that there is not presently enough of that special equipment to allow the railroads to make it available to all potential shippers. I also said that the railroads have not made any effort whatever to reduce the rate on the obvious economies that are effected in the bulk

shipment of flour but they have hastened to do so on the bog-john shipment of grain.

Mr. HEMPHILL. Getting back to your prepared statement, if what you say is true, then the only person who would benefit would be the pet shipper, is that right?

Mr. WILSON. That is the one thing we would like to avoid.

Mr. HEMPHILL. Excuse me, Mr. Chairman. I am hep on that subject because my people are suffering down in South Carolina and they are not going to suffer if it takes my whole body to fight this legislation because I am not going to have anything like that. I do not believe that is American.

Mr. WILSON. Well, right or wrong, it is our opinion that the best way to avoid this discrimination is to stay with the authority of the ICC to set minimum rates and to limit both the bulk and agriculture exemptions.

Mr. HEMPHILL. We disagree there but just the same I am terribly concerned about this pet shipper competition because I have a letter in my pocket, I read it to you a little bit ago.

Thank you, Mr. Chairman. I am sorry for butting in.

The CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. Mr. Wilson, if we passed H.R. 4700, do you think this will affect the consumer?

Mr. WILSON. I have stated that in our opinion it would ultimately make the costs of flour higher.

Mr. FRIEDEL. You do?

Mr. WILSON. Yes, sir.

Mr. FRIEDEL. Can you answer this question? In Baltimore City I think, starting next week three of the biggest bread concerns are going to raise the price of bread 2 cents a loaf. That cannot be blamed on this bill. Why are they going to raise the prices on flour, on bread?

Mr. WILSON. No, sir; and I would not say that it is. I did not say, of course, that this is the only thing in the world that will raise the price of bread. I do not know why they are raising the price of bread in Baltimore.

Mr. FRIEDEL. Surely the present law is not protecting the consumer and I cannot see how this bill will adversely affect the consumer.

Mr. WILSON. We can only state as far as we are concerned that we know from the distribution of the wheat berry that if major moves must be made by flour milling, mill feeds will return less to the miller and will cost the feeder more and that will resut in the higher cost on flour.

Mr. FRIEDEL. You mean if it cost less to ship it, it is still going to cost the consumer more money? I cannot follow that.

Mr. WILSON. My testimony covered this reasonably well, probably too much in technical terms, but again let me repeat, the animal population eats approximately 30 percent of the wheat berry and if we are compelled to ship wheat to Pittsburgh and then ship the 30 percent of the mill feed that results in the manufacture of flour back to Nebraska, it is going to cost more money; or if we have to sell it at the same price, the recovery to the miller will be less and that will have to be tacked on to the cost of a sack of flour. Either way you do it the flour must cost more money.

Mr. FRIEDEL. Your earlier statement, you admitted or you made a statement——

Mr. WILSON. I like the latter.

Mr. FRIEDEL (continuing). That the industry had not kept up with the times and they are going to have new flour mills all over the United States changed around.

Mr. WILSON. No, sir; I didn't say that. I think the industry has kept extremely well up with the times but I think the times are going to continue to progress and so is the industry.

Mr. FRIEDEL. Well, I think the industry evidently has not kept up with the times by not having these different mills in areas where flour is going to be consumed. You say that you are going to do it and I think that is a step in the right direction.

Mr. WILSON. They will.

Mr. FRIEDEL. That is all.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Wilson, in theory apparently you agree with the proposition of the 1958 Transportation Act that each mode of transportation ought to be permitted to pass along its inherent advantages to the shipper.

Mr. WILSON. Yes, sir.

Mr. YOUNGER. But you do not believe that within a mode if one part of the mode like Southern Railway with the big john car has an inherent advantage they should not be permitted to pass that advantage along because the other railroads don't have the big john?

Mr. WILSON. No, sir; that is not my belief at all. My belief is that anyone who has an advantage can set the price to the limit of his ability but that the price he sets should be a pattern price and should not be just between limited points or for limited use.

No, I quite agree that if the Southern can develop the big john or somebody else can develop some other technological advance it should be passed along and they should be allowed to publish that, but it must be done on a uniform pattern basis.

Mr. YOUNGER. Within their own line?

Mr. WILSON. As far as their own lines go.

Mr. YOUNGER. The Southern cannot pass along that advantage to the Great Northern if the Great Northern does not have the big john?

Mr. WILSON. I quite agree with that. I don't think there is any disagreement there.

Mr. YOUNGER. I understood you to say you objected to the line within a mode which might have an inherent advantage through technology and new equipment should not be permitted to pass that along unless it could be done by the entire mode.

Mr. WILSON. I would like to be real careful not to undertake to ascribe anyone else's motives for what they do or don't do, but let's take that Southern case which seems to be a favorite. I have no objection whatever and our industry has no objection whatever to any savings that can be made by the development again with the big john car if they are passed along uniformly, but I do not believe that it is correct for a rate to be made when the maker of that rate is not prepared to give and to truly furnish that service to all of its shippers. If you were shipping on the Southern today and wanted to get a big john car, you

just might not get it because somebody else who is a big shipper has already got all they have.

Mr. YOUNGER. Well, following up I think the remark you made that they reduced the rate for the big john car for wheat, but did not reduce the rate for flour——

Mr. WILSON. That is correct.

Mr. YOUNGER (continuing). Then following that up, if they reduced the rate, if their technology permits them to have a compensatory rate for wheat, they should also use that same rate for all the transportation that can be carried by the big john car; is that correct?

Mr. WILSON. There is, perhaps, a point that I did not make as clear as I should when I went by there. The big john car is adapted to wheat hauling. There is also a very effective bulk car that is developed for flour hauling. They have made no move whatever to reduce the price of hauling flour because they have modern and convenient and efficient cars for the hauling of flour.

They have reduced that on wheat for their own specific purpose and here again I hesitate to ascribe the other man's motives but I do state very flatly that there is just as much reason today for a reduction in the cost of hauling a bulk car of flour as there is in the hauling of a bulk car of big john wheat and it has not been done.

Mr. YOUNGER. Do you think that is the fault of the ICC in the administering of the rate?

Mr. WILSON. No, sir.

Mr. YOUNGER. What?

Mr. WILSON. No. I do not.

Mr. YOUNGER. Just the fault of the carrier in not giving the same advantage to all shippers?

Mr. WILSON. That is correct, because the same pressure apparently—here I am impugning the motive to a man again—he had some pressure on his wheat, on his grain hauling so he made a reduction in his grain hauling, not necessarily for the benefit of the shipper but for the benefit of himself.

He has equipment that will haul the flour more economically than he used to haul it. There has been no reduction in the rate.

Mr. YOUNGER. Your theory then is if the water carriers develop a bulk carrier for flour——

Mr. WILSON. As a matter of fact, sir, I know 1 company that presently owns 20 bulk flour barges.

Mr. YOUNGER. Then the Southern might reduce their rate for flour?

Mr. WILSON. Very possibly.

Mr. HEMPHILL. Will the gentleman yield to me at this point?

Mr. YOUNGER. Yes.

Mr. HEMPHILL. Are you saying that if some railroad would reduce its price to a certain customer or shipper of any commodity exempt for railroads that it would not be for the benefit of the consumer nor the shipper but for the benefit of the railroad in order to get all the business?

Is that what you are saying, sir?

Mr. WILSON. Would you repeat that? I want to be careful about that one.

Mr. HEMPHILL. Yes, sir, I think you ought to be.

The CHAIRMAN. The reporter will read the question.

(The question was read.)

Mr. WILSON. I don't really think that I should be the judge of that but I think my personal opinion would be that if he did it for just one shipper that would be why. Wouldn't you?

Mr. HEMPHILL. I am not on the witness stand.

Mr. FRIEDEL. Would the gentleman yield?

Mr. HEMPHILL. Mr. Younger has the floor, sir.

Mr. YOUNGER. I yield the floor.

Mr. WILSON. I don't believe there is any propriety in my responding to that. My opinion is only a personal opinion. Again, I don't ascribe motives to the people that do things.

Mr. HEMPHILL. If the gentleman will yield back to me, I am not asking you to ascribe a motive, I am asking what will happen to the consumer down the line whether or not he benefits. I mean the vested interests are all here but the consumer is not here except in the members of the Congressmen on the committee.

Mr. WILSON. A general reduction should benefit the consumer, a specific reduction might not.

Mr. HEMPHILL. Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Wilson.

Mr. WILSON. Thank you.

The CHAIRMAN. Mr. Joseph Moody.

Mr. Moody, you may proceed.

STATEMENT OF JOSEPH E. MOODY, PRESIDENT, NATIONAL COAL POLICY CONFERENCE, INC.

Mr. MOODY. Thank you.

Certainly our motives here are very clear.

My name is Joseph E. Moody, and I am president of the National Coal Policy Conference, composed of coal producers, coal-carrying railroads, coal-burning electric utilities, the United Mine Workers and the manufacturers of coal mining machinery.

The interest of this conference in H.R. 4700 stems from the direct interest of its membership in the transporation of coal at rates that will enable it to compete equitably with other forms of energy.

Under present law, the railroads, which provide coal's principal means of getting to market, are subject to severe handicaps in competing with other phases of transportation. Principal among those handicaps is the present grossly discriminatory restrictions of Federal transport regulations.

H.R. 4700 would alleviate, to a considerable extent, the unfair competitive advantage given the railroad's competitors by the exemption from rate regulation by the Interstate Commerce Commission of certain products for trucks and bulk exemptions for water carriers.

As you know, numerous agricultural and related commodities are exempt from rate regulation when they move by truck, but are not exempt when they move by rail. There is a similar prejudice in competing with water carriers for the movement of coal, iron ore, grain, petroleum, and other commodities that move in bulk, completely free of regulation when waterborne, but subject to full regulation when shipped by rail.

Coal moves by various forms of transportation, including barges and trucks, and I suppose wheelbarrows. However, by far the greatest volume is dependent on railroad haulage. In 1961, the latest year for which I have seen the figures, 73 percent of all coal mined in the United States moved by rail, and as the railroads continue to reduce their freight rates, as this bill will help them to do, this percentage will likely go even higher.

Thus, it is important to the coal industry that the railroads be maintained as profitable enterprises, capable of providing modern, low-cost transportation for coal as it is needed.

This legislation would permit the railroads to achieve a greater degree of flexibility in the exercise of informed managerial judgment as to the optimum level of rates for a large proportion of their traffic.

Railroads could publish lower rates for transportation of bulk commodities, attract much additional traffic, save large sums of money for the shippers in the process, reduce costs to receivers and the public, and at the same time substantially enhance the railroads' revenues and materially improve their financial condition.

Specifically, railroads would be permitted to establish competitive rates for hauling coal, without fear that they will be suspended by the ICC, and thus coal producers and consumers can safely make large tonnage, long-term contracts with assurance that their provisions can be lived up to.

Two-thirds of intercity highway ton-miles and 90 percent of waterway tonnages are free of ICC regulation. The railroads, in contrast, are 100 percent regulated.

And this situation is being sharply reflected in business growth of competing carriers. The U.S. Chamber of Commerce recently made a study which showed that between 1946 and 1962 rail and truck traffic regulated by the ICC increased only 1 percent (from 703 to 711 billion ton-miles), while truck traffic—free of ICC regulation—increased by a whopping 229 percent (from 64 billion ton-miles to 210 billion).

It is important to note that agricultural and other bulk commodities amount to about 70 percent of total railroad tonnage and abou 45 percent of total railroad gross freight revenues, according to the American Association of Railroads.

Just this week two of the Nation's greatest railroads reported to their respective stockholders that each had deficits of more than $3 million in 1962. Both are carriers which derive much of their freight revenue from hauling coal. In fact, in 1962, coal traffic provided 41 percent of the total freight tonnage and 19.5 percent of the freight revenue of one of these railroads and 17 percent of the freight traffic revenue of the other.

Revenue from transportation of coal for all the Nation's class I railroads in 1961 amounted to more than $1 billion or 12.1 percent of total freight revenues. Thus, it is obvious how important legislation such as H.R. 4700, which will permit coal to compete on more even terms in major markets—particularly the electric utility market—will be to the hard-pressed railroads of America.

Certainly, it is crucial, not only to coal, but also to the rest of the Nation, that our railroads be kept strong.

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The crisis in Cuba had a profound and lasting effect upon the coal and railroad industries, just as it did upon the entire Nation and all of its diverse elements.

For 158 suspensive hours early in November 1962, this country lived on the brink of war. Our rapid buildup of forces to meet the emergency certainly helped to avert catastrophe.

It is a tribute to the railroads that they were able to transport needed defense armaments to a needed spot, at a rapid speed, to protect our own security, regardless of the risk involved.

One lesson grows out of the Cuban crisis and that is that this Nation must remain strong militarily, economically and spiritually. It is equally clear that a basic part of the national security is a strong railroad industry.

No one can say how many future Cuban-type crises we, as a Nation, must face and overcome before peace is assured for the world. But, certainly, we must be prepared for any eventuality.

Passage of this legislation will be a major step forward in enabling the railroads to maintain their economic strength and physical properties to meet such crises. On the other hand, continuation of unfair competitive penalties by inequitable regulatory restrictions can have only the opposite result.

The coal industry is pinning its hopes for a bright and prosperous future on increasing use of coal by the electric utility industry, coupled with the ability of the railroads to cut their coal transportation costs substantially through trainload, large volume deliveries which new technologies are now making possible.

Coal now represents about two-thirds of the conventional fuels used by the electric utility industry, with consumption running currently at a rate of nearly 200 million tons a year. Two hundred million tons account for almost half of the annual cost production in the United States. Spokesmen for some utilities have forecast utility use of coal amounting to 475 million tons a dozen years from now. They predict that the utilities will consume about 600 million tons by the turn of the century.

These projections, I wish to point out, make allowance for a simultaneous increase in the production of nuclear power, but also are based on the continuing ability of coal to compete with other fuels. We are confident that coal producers will be able to lower even further the cost of mining coal through further developments in mechanized mining. Likewise, the railroads will be able to lower transportation costs by major fractions if they are not hampered from doing so by inequitable regulations.

During the past 12 months, the trend toward providing more efficient and lower cost coal transportation by rail has made greater strides than in any comparable period in railroad history. Coal's increased competition from natural gas, sold at extremely low rates for boiler fuel, and from imported residual oil sold at "dump" prices to undercut coal, has grown steadily more severe in recent years, despite a truly remarkable record in reducing delivered coal prices in the face of growing inflation for most of the rest of the economy.

The national average freight rate per net ton of coal hauled decreased from $3.58 in 1957 to $3.37 last year—that is using the average—according to the ICC, while during the same 6-year period, the

Bureau of Mines reports that the average coal price at the mine dropped from $5.08 a ton to $4.54.

Following is a table showing the price reductions achieved by the railroads and the coal industry in the past 6 years:

	Average coal price at mine	Average coal freight rate	Total of average delivered price
1957	$5.08	$3.58	$8.66
1958	4.86	3.58	8.44
1959	4.77	3.45	8.22
1960	4.69	3.40	8.09
1961	4.58	3.40	7.98
1962	4.54	*3.37	7.91

*1st 6 months.

Source: Coal prices: U.S. Bureau of Mines; Freight rates, Interstate Commerce Commission.

As creditable as this record of freight rate reduction by the railroads may appear, it promises to be greatly surpassed by the approach to the volume concept of coal transportation known as the unit-train, or integral-train, operation, which involves shipments of trainload lots of coal transported from one mine, or group of mines, to one customer loaction on fast, nonstop schedules. A typical example of this is the Pennsylvania Railroad's new trainload tariff covering the movement of coal from a mine in Tunnelton, Pa., to a powerplant at Martins Creek, Pa., a distance of 395 miles. The rate published for this movement is restricted to minimum trainload lots of at least 5,950 tons, and represents a reduction of 27½ percent in the normal single-car rate.

Loading of the train at the mine is required within 4 hours, and unloading must be accomplished with 11 hours after arrival at the plant. The train consists of motive power furnished by the railroad and privately owned coal cars assigned exclusively to this shuttle service. This unit-train operation will represent an increase of about 600 percent in present average hopper car utilization.

Tariffs published for the account of other eastern railroads provide for the reductions of $1.50 per ton under the single-car rates of bituminous steam coal to any destination in trunkline territory subject to minimum trainload loading and a similar period of unloading. When three or more mines are involved, the reduction is $1.25 per ton.

Rate activity of this type is not confined to eastern destinations. Midwest and Alabama coal also is moving or will move in unit trains at greatly reduced rates below the single-car tariff. We are also hopeful we will go to the coast.

But the railroads are planning even more advanced and efficient equipment, if they can be assured of the coal freight traffic to justify it. Some 35 coal-carrying railroads have entered into a joint project to develop equipment for the so-called integral train which will be made up of several sections composed of five or six cars permanently coupled together, with a "power package" in between. Each section will be the equivalent of about 30 present-day coal cars, and the entire train will have a capacity to haul about 35,000 tons of coal.

It is expected to have a loading capacity of 10,000 tons per hour and an unloading rate of 30,000 tons an hour. If such equipment can

be developed, and railroad men assure me it can, it is apparent what it can mean in reduced operating costs—and thus, reduced transportation rates—for coal.

The railroads will be more secure in going ahead with developing the unit trains and the more advanced concept of integral trains, using revoluntionary new equipment and methods, under legislation such as H.R. 4700. Under present regulations, the railroads have no assurance that low rates established as a result of these new concepts will not be suspended by the ICC either as the result of protests of rival carriers or on its own initiative. Thus, the fact that the unit-train development is making favorable headway at this particular time does not imply that it might not at some future time run into resistance under present regulatory practices.

Under existing law, a railroad publishes a proposed rate reduction to apply to a unit-train operation. A competitive carrier, under present law, may protest the proposed tariff as "unreasonably low," even though it is fully compensatory. Suspension of the effective date of the proposed rate reduction may, and frequently does, follow. This suspension could last for a period of 7 months, or even longer.

Even if the proposed rate is finally found to be lawful, approved by the ICC, and reinstated, the traffic and revenues that would have resulted from it are nevertheless lost for whatever period of delay there might have been. Worse still, an entire year's full contract with major consumers may have been lost to coal because of the delay or the inability to guarantee a delivered price based on the reduced transportation rate.

It boils down to the railroads being hamstrung under existing law, constantly faced with the possibility of loss of revenue temporarily or indefinitely due to protest of a competitor or the objection of the ICC.

The coal industry, which depends so much upon the railroad industry for profitable operations, strongly supports changes in transportation legislation that will enable the carriers to have a freer hand in the operation of their industry, permitting them to negotiate with their customers in a much more practical and realistic manner than is now possible.

It would be beneficial to the coal industry and the railroads, as well as the economy of hard hit coal producing areas, if the legislation under consideration here enables the railroads to enter into long-term contracts on interstate traffic.

An electric utility is able to enter into a long-term contract with a coal company to supply coal over a period of years at a fixed price, subject to so-called escalation clauses. Contracts not subject to governmental regulation can be negotiated with barge companies for the transportation of coal. Trucklines are privileged to make contract rates. Essential to the construction of a coal pipeline would be prior execution of a long-term contract for its capacity use.

Strangely enough, railroads do not have such latitude.

No such contracts for interstate delivery have ever been permitted by the ICC. We believe its authority to prohibit such freedom of action to the railroads—and the railroads, alone—should be rescinded.

Coal has a great stake in this proposed legislation, as it gives the coal industry an opportunity to meet predatory pricing in areas of

the Nation that have no immediate coal production, but must depend on transportating coal from the mine to these areas by railroad.

We feel, however, that one provision of the proposed measure should be changed. It is important that shippers and carriers should be permitted to continue to discuss proposed rates through the facilities of rate bureaus and conferences. Such discussions are not binding on the participants, each of which reserves the right to make its own decision, but they serve as important forums to keep both carriers and shippers informed about matters of concern to them.

Prohibiting them, many feel, would result in confusion and negate much of the advantages which H.R. 4700 is intended to produce.

The National Coal Policy Conference urges this committee to approve H.R. 4700, with the suggested change on conference ratemaking, as a very important means of strengthening the vital railroad industry and of permitting coal to compete on more equitable terms in its major markets.

Mr. HEMPHILL. Thank you, Mr. Chairman.

I would like to ask you one or two questions please, sir. I believe your conference was composed of coal producers, coal-carrying railroads, and coal-burning electric utilities and so on.

How many railroads do you include in your conference that own coal mines?

Mr. MOODY. Well, under the Elkins Act, as you know, the railroads are not allowed to own the coal they ship, so as far as I know they may have investments in land and some of them do have land with coal reserves such as the N. & W.

I do not know of any mines that they actually own. The Union Pacific did, have some and produce coal for the railroad's use, but I am sure that all of those mines have been closed.

Mr. HEMPHILL. What about the Norfolk & Western?

Mr. MOODY. They don't own any mines that I know. They used to own one at Williamson but that was closed down some years ago.

Mr. HEMPHILL. Do they have some interest in the land?

Mr. MOODY. Yes.

Mr. HEMPHILL. The producers?

Mr. MOODY. They have a stock interest, as I understand it. I am not an authority on this land-owning business but as I understand they have a stock interest in the Pocahontas Land Co. I am afraid you are getting a little far afield on my knowledge of land ownership. We know that railroads did have land grants when they were originally built and some of them still own some land, there is no question about that.

I would not know what the extent of their present ownership was.

Mr. HEMPHILL. And your lack of knowledge would include the Piedmont & Northern, I would assume?

Mr. MOODY. It would include any of them. I am not an expert on land ownership; I would not want to speak about it. Of course, we converse about it but I do not have that information available.

Mr. HEMPHILL. And the United Mine Workers, do they own any coal pits of any consequence?

Mr. MOODY. I don't believe they own any. I never heard of them owning any.

Mr. HEMPHILL. How about the coal-burning electrical utilities?

Mr. MOODY. Well, the electrical utilities from time to time have gone into the coal business and every once in a while they decide to have a coal mine near a powerplant and operate it themselves. There are very few of them.

The Alabama Power Co. at the present time does have a major interest in the Southern Fuel Co. or some name similar to that the actual stock ownership of which does lead back to the utility companies.

Mr. HEMPHILL. How about any manufacturers of coal mining machinery?

Mr. MOODY. That would what, own mines?

Mr. HEMPHILL. Yes, or interest.

Mr. MOODY. They sell them equipment but I do not know of any who own mines.

Mr. HEMPHILL. If H.R. 4700 were enacted into law, would that reduce the price of coal or raise the price of coal to the person who is using the coal domestically; that is, a housewife or a housekeeper, would that reduce his price or raise his price, the consumer?

Mr. MOODY. Well, the number of housekeepers who are using coal unfortunately is rather low, Mr. Congressman. Most of the household coal that would be purchased would be purchased through retail distributors. The control of the price to the householder would be the retail distributor, not the mine or the railroad.

However, any reduction that you have in freight rates, which is a major part of the cost of bringing coal, because it is a heavy, bulky commodity. For some time the transportation cost was greater than the cost of mining it.

It would be my opinion, therefore, that any reduction in the transportation cost overall would go to all consumers. Now it would not go in direct proportion. In other words, if you were selling South Carolina Power & Light Co. coal, and they can buy 3 million tons a year from a producer on a contract, 3 millions tons a year for a number of years, they would have a greater benefit than you or I who might buy 5 tons.

Mr. HEMPHILL. What about the fellow who buys a dollar's worth of coal? Down home we have some people who are poor, even though this is a great Nation; they buy a dollar's worth of coal.

Is it going to go up or down for that person?

Mr. MOODY. I think I answered that as best I could. Any effect of this is to lower destination cost all the way along and would have the tendency in a competitive market, of lowering the cost.

Mr. HEMPHILL. Do you think there would be any possibility of some preferential—we had the word "pet" treatment here awhile ago.

Mr. MOODY. I heard that.

Mr. HEMPHILL. I am disturbed by it, I am really disturbed.

Mr. MOODY. On page 8 of 4700 there is some language there which I believe answers your question; it says:

The Board, however, shall retain all currently effective authority and power to determine that such a rate or charge is in violation of applicable provisions against unjust discrimination, or undue or unreasonable preference or advantage.

Now, I think if it says what I think it says, it would answer your question. Now, whether that is the proper language or whether your committee would strengthen it or not, I don't know, but certainly there is the intent to avoid what you are talking about.

Now, I am no rate expert but when it comes to the matter of pet shippers, I suppose the coal industry is probably as near to having a master's degree in that as anybody.

Mr. HEMPHILL. I am aware of that.

Mr. MOODY. But I think that in the present severe—and I mean very severe—competitive situation in which we find ourselves fighting against imports of residual, of Government-subsidized nuclear energy, of pipeline gas and oil, there is not very much leeway and I doubt very much that there would be much chance.

I heard you express yourself and I admire you for it, and I think that in the coal industry there are a lot of people just like you, that would see to it that that didn't happen.

Mr. HEMPHILL. Let me assure you I am sympathetic to you. I voted for some legislation for which I have been severely criticized at home because I felt the coal mining people in Pennsylvania and West Virginia have been certainly—I hate to use the word—discriminated against in other activities of the Government.

I would be inclined to help you but I am right much disturbed because someone talks about pet shippers and then I get a letter in my pocket from a fellow in whom I have great confidence because I know he is honorable, and he is catching the devil bitterly because he just does not happen to be one of the boys that contributed, you know, and it makes me wonder whether or not in this legislation we could accomplish what was intended.

Mr. MOODY. It is like so many things, we have to use men; we have not found anything else any better to use in this business and they are not always infallible.

Mr. HEMPHILL. Yet a good law is. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Moody, if I interpret your statement correctly, the passage of 4700 would stimulate the railroad business?

Mr. MOODY. Yes, sir; I think it would.

Mr. YOUNGER. Probably employ more people?

Mr. MOODY. I believe they would. Maybe not the same ones but you can't move technically and hold the same employees. Overall, any technical improvement of this kind teaches us that over a period of years there will be an increase in total employees involved.

Mr. YOUNGER. Well, it would increase. You represent the United Mine Workers and I take it from your testimony that the United Mine Workers are for the bill?

Mr. MOODY. Yes.

Mr. YOUNGER. Why would you suppose that the brotherhoods oppose it?

Mr. MOODY. Maybe because of their leadership. You see, we have in the coal industry some of the firmest characters I have ever known. I have been in it quite a while myself. We have had the great fortune of a historical coincidence of leadership.

This conference that I represent is a demonstration—there is no other in the world, never has been—where the leaders of a great complex of industry could establish a courtesy of understanding or acceptance of the other fellow's point of view.

As you know, the United Mine Workers through the leadership of Mr. Lewis and his associates, decided the only way we would have a coal industry was by increasing the production per man-shift and we have trebled it in the last 12 years.

However, in the process the number of working coal miners dropped from better than 400,000 to 150,000 active coal miners.

Now you say, "Well, was that a loss overall?" It is something I cannot answer you for the simple reason—how many men does it take to build a push-button mining machine 6 stories high that can produce 300 tons of coal per man-shift? How many men does it take to service the equipment—the repairman, the electrician, the mechanics, the shopmen.

Our miners are extremely proud people and very highly skilled. So in this change we find they were willing to take this kind of a shrinkage in number and the producers were willing to pour their money into it, and this is one more advantage in cost we want to put into the job of making our industry the best in the world.

Mr. YOUNGER. Thank you.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Moody, do you think that there will be any difficulty of effectuating the new rate on coal as announced by the New York Central, Pennsylvania, and New York-Chicago and St. Louis Railroads with the Cleveland Electric and Consolidate Coal Co?

Mr. MOODY. I don't know how it will finally go. I think as of this time it is going to be put into effect unless there is some action of the ICC to upset the whole applecart, Mr. Chairman. Otherwise, I don't think they would have gone as far as they have with their announcements.

The CHAIRMAN. In other words, this would be an example, then, that the agency, the utility, the railroad, the coal industry, and everybody is working together toward the proper administration for law in the interest of the public?

Mr. MOODY. That is right, and it is to the interest of the public because it means lower electrical rates all the way along and for us it probably means the possibility of lower rates for electric heat so we can compete, with other fuels.

The CHAIRMAN. Is this not a clear example of what can be done under proper regulation?

Mr. MOODY. Yes, Mr. Chairman, as I understand it there is always the question of whether you have the clearly demonstrated authority to go ahead. There are other proposals in New York and Detroit and Chicago, they are trying every possible way that they can to get the cost of transportation lower and thereby lower consumer costs.

The CHAIRMAN. There is no competition with reference to coal movement between the railroads and the trucks?

Mr. MOODY. As an unqualified statement, I would say that probably is not correct. As a matter of impact on the economy, that would be so. They are in a different field although hauling the same commodity.

The CHAIRMAN. I know on short hauls there naturally would be competition to that extent. Now, are the trucks regulated?

Mr. MOODY. Not as far as I know.

The CHAIRMAN. Are the trucks regulated? I thought they should be.

Mr. YOUNGER. It is the bulk commodity, exempt only in the water carrier.

Mr. MOODY. I am not an expert on it, I would not want to be held to that.

The CHAIRMAN. I was of the opinion that this kind of a commodity moving by truck had to be by regulation, referring to the permit under the ICC law.

Mr. MOODY. That may be so, sir; I don't know.

The CHAIRMAN. Then the real problem here is the competition between rails and the water bulk hauler?

Mr. MOODY. Basically, we need the lowest rates possible in all forms of transportation.

The CHAIRMAN. Is that what you are afraid of?

Mr. MOODY. This would certainly facilitate this major change in our industry, Mr. Chairman, which is this combination of delivery costs.

The CHAIRMAN. If it worked out that we were unable to grant all the freedom that has been asked for and recommended here, and should the committee come up with some way to equalize this situation, the common carrier situation, do you think your organization would be favorable to effectuating something of that kind?

Mr. MOODY. Mr. Chairman, knowing the chairman as well as I do and as long as I have and the members of this committee, I am sure what you would do would be as equitable as you could possibly make it.

We are speaking hypothetically and it is pretty hard to answer "Yes" or "No" under those circumstances.

The CHAIRMAN. I appreciate that.

Thank you very much for your testimony and we were glad to have you before the committee.

Mr. MOODY. Thank you.

The CHAIRMAN. The committee will adjourn until 10 o'clock in the morning.

(Whereupon, at 4:10 p.m., the committee recessed, to reconvene at 10 a.m., Friday, May 10, 1963.)

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